



MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

THE LAW OF
PRECEDENTS
CONVEYANCING

KEY AND ELPHINSTONE'S
COMPENDIUM
OF
PRECEDENTS
IN
CONVEYANCING

TWELFTH EDITION,
VOL. 2, PART I.

BY

FREDERICK TRENTHAM MAW, B.A., LL.B.

JOINT AUTHOR OF ROBBINS AND MAW ON THE DEVOLUTION OF REAL ESTATE
AND ADMINISTRATION OF ASSETS;
OF LINCOLN'S INN, BARRISTER-AT-LAW;

AND

HOWARD WADE RENSHAW, B.A., LL.B.

OF THE INNER TEMPLE, BARRISTER-AT-LAW.



LONDON:
SWEET AND MAXWELL, LIMITED,
2 & 3, CHANCERY LANE.
1926.

Digitized by the Internet Archive
in 2026

TABLE OF CONTENTS.

MORTGAGES.

PRELIMINARY NOTE	1-6
----------------------------	-----

RECITALS.

Title :	PAGE
1. Title of estate owner of freeholds	7
2. Title to equitable interests in land	7
3. Title under lease	7
4. Devolution of title to lease	8
5. Title subject to leases, restrictive covenants, and mortgages .	8
6. Title to life endowment or sinking-fund policy or policies .	8
7. The same effected in name of mortgagee	8
8. Title to issue or survivorship policy	8
9. Guarantee policy	9
10. Mortgage of freeholds. Variations for leaseholds	9
11. Sub-mortgage	10
12. Devolution of equity of redemption	10

Introductory :

1. Agreement for loan	10
2. The same by several on joint account	10
3. The same by several on distinct accounts	11
4. Agreement to secure present and future advances	11
5. The same where the loan is by trustees	11
6. Agreement to secure sum due on account stated	11
7. For payment of compound interest	11
8. That surety shall join	11
9. Surety independently advised	11
10. Agreement to postpone security	12
11. State of mortgage debt	12
12. State of mortgage debt where interest in arrear	12
13. State of mortgage debt where sale has been made	12
14. Total principal money secured	13
15. Agreement for further advance	13
16. Title to shares, &c.	13
17. Agreement for transfer	13

MORTGAGES. INTRODUCTORY— <i>continued</i> .	PAGE
18. Agreement for transfer and further advance	13
19. Agreement for further security	13
20. Desire to redeem	13
21. Desire for reconveyance, all mortgage-moneys having been paid off	13

Consideration—Receipt :

1. Present advance	14
2. Sum paid by mortgagee to third party	15
3. Antecedent debt	15
4. Sums paid by several on distinct accounts	15
5. Present advance and covenant for further advance	15
6. Mortgage moneys having been paid off	15

Covenants for Payment :

1. To pay principal and interest	15
2. To pay interest after default	17
3. Where interest is payable in advance	17
4. By two or more jointly and severally	18
5. By tenant for life to pay interest during his life	18
6. To pay present and future advances	18
7. To pay principal and interest in respect of distinct debts, and to pay interest after default	18
8. Covenants in a stock mortgage, with variations	19
9. To pay principal by instalments, and interest on unpaid principal On default in payment of any instalment unpaid principal to be immediately payable	19
10. To pay principal and interest on demand	20
11. By firm to pay balance on account current	21
Proviso keeping alive higher rate of interest on bills, etc.	21
12. By surety to pay interest on default of mortgagor	21
13. Covenant by tenant for life as surety for payment of interest and charge thereof on his life interest	22

Habendum :

1. Freeholds	22
2. Leaseholds	23
3. Pure personalty	23
4. Freeholds and leaseholds together	23
5. For transfer of mortgage of freeholds and leaseholds together. Variation where new equity of redemption is created	23
6. The same for personalty	24
7. For reconveyance of part of mortgaged property. Variation where whole debt is repaid	24

Provisoes for Redemption :

1. Legal estate in freeholds or leaseholds	24
2. Personalty and equitable interests in freeholds and leaseholds	26
3. In mortgage to secure present and future advances	26

CONTENTS.

V

MORTGAGES. PROVIDORES FOR REDEMPTION— <i>continued.</i>	PAGE
4. In mortgage of shares and debentures. Variation for prior charges	26
5. In stock mortgage	27
6. Where covenant for payment of principal is for payment by instalments	27
7. Where principal is to be paid on demand	27
8. Mortgage to a firm	27
9. In mortgage to bankers to secure account current	28
10. Short form to follow habendum	28

Trustee Clauses :

1. Charge of interest after default	28
2. Joint account clause	28
3. Clause negating personal liability	28

Capital and Interest Clauses :

1. Provi ion for reduction of interest on punctual payment	29
2. Provision for continuance of loan for a term certain	29
3. Mortgagor not to pay off for term certain	30
4. Provision for payment by instalments	30
5. Power to anticipate instalments	31
6. Provision for accumulation of interest in arrear at compound interest. Variation where accumulated interest is to be capitalised	31, 32
7. Proviso in mortgage of reversion that principal shall not be called in, and interest shall accumulate during life of tenant for life	33
8. Covenant by mortgagee to make further advances	33

Surety Clauses :

1. Declaration that sums advanced by different mortgagees are to be rateably secured	34
2. As to primary liability between principal and surety where property belongs to surety	34
3. The same where property belongs to mortgagor	35
4. Surety to be liable as a principal debtor	35
5. As to property mortgaged by surety where no personal covenant on his part	35
6. Provision limiting surety's liability	35
7. Covenant to produce evidence of mortgagor being alive	35
8. Provision where surety liable for part only of a debt	36

Provisions for Maintenance and Protection of Mortgaged Property :

1. Covenant to keep up life or endowment policy	37
1A. Mortgagee to have power to pay extra premiums for extraordinary risk	39
2. Covenant to keep up life policy. Short form	40
3. Covenant to keep up guarantee or sinking fund policy.	40
4. Covenant to repair and insure	40
Proviso where prior instrument contains such covenants	42

	PAGE
MORTGAGES. PROVISIONS FOR MAINTENANCE AND PROTECTION OF MORTGAGED PROPERTY— <i>continued</i> .	
5. Provisions as to insurance supplemental to the statutory power	43
6. Covenant to insure against suspension of rent	43
7. Power to insure against accident, &c.	44
8. Covenant to pay outgoings	44
9. Covenant for renewal of lease	45
Variation where lease is subject to prior mortgage	45
10. Covenant against registration	45
11. Powers for protection of a mortgage of equitable interests	46
12. Power to settle accounts	47
13. Covenant to carry on business and keep accounts in mortgage of business	47
14. Covenant to keep accounts in mortgage of land or buildings	47
15. Covenant by mortgagor to perform covenants of underlease	48
16. Covenant to appoint a manager	48
17. Timber only to be cut in ordinary course of management	49
18. Power to mortgagee to have buildings, &c., surveyed	49
19. Power to have property valued	50
20. Valuation of shares, &c.	50
21. Indemnity as to and covenant to perform restrictive covenants	50

Powers of Sale :

PRELIMINARY NOTE	51-55
1. Full form. Power to sell and convey	55
2. Express power of sale by reference to statute	57
3. Power to sell for rent-charge	58
4. Power to sell by tender	58
5. Power to sell fixtures by valuation	58
6. Clause varying statutory power of sale	58
7. Events in which power of sale shall be exercisable	58-61
8. Short form excluding L. P. Act, 1925, s. 103	61
9. Power to mortgagor to sell part of property	61
10. Exclusion of statutory power of sale	61
11. Power to sell leaseholds in lots by way of underlease	61
12. Power to surrender policy	61
13. Addition to statutory power in second mortgage	62
14. Power to create and sell a rent-charge	62
15. Addition to power of sale referring to the L. P. Act, 1925, s. 196, as to notices	63

Powers of Leasing :

1. Express power of leasing for twenty-one years to be exercised by the mortgagor or mortgagee while respectively in possession	63-65
2. Clause restricting mortgagor's statutory powers of leasing, &c.	65
3. Clause extending statutory power of leasing	66
4. Power to mortgagee to take immediate possession, and to manage, grant leases, &c.	66
5. The same adapted to mortgage of buildings let out in flats	68

MORTGAGES—*continued.*

PAGE

Miscellaneous Clauses :

1. Power of attorney in assignment of debt or chose in action	69
2. Receipt clause in mortgage of policy or reversionary interest	70
3. Receipt clause in mortgage to bank	71
4. Trusts of money received in respect of policy or reversionary interest	71
5. Power to solicitor-mortgagee to charge	71
6. Charges under Agricultural Holdings Act 1923, in favour of landlord, to be transferred to mortgagee	72
7. Power to mortgagee to pay compensation under Agricultural Holdings Act, 1923	73
8. General clause giving powers to mortgagee	73
9. Provision as to changes in firm	73
10. Consents, &c., of company, how to be given	73
11. Charge of mortgagee's expenses with interest	74
12. Mortgagee's indemnity clause	74
13. Clause preserving right of consolidation	74
14. Interpretation of "successors in business"	75
15. The same limited to the case of one original member of a firm continuing	75

Attornment-Distress :

1. Attornment clause	75
2. Power of distress for interest	77

Appointment of Receiver :

1. Appointment of receiver. Full form applicable to freeholds and leaseholds	77
2. Appointment of receiver. A short form by reference to the statute	82

Precedents :

I. Mortgage by Demise of a Legal Estate in Freeholds by an Estate Owner absolutely entitled. Variations for Mortgage to Trustees or others advancing Money on a Joint Account	83
II. Charge by way of Legal Mortgage of a Legal Estate in Freeholds or Leaseholds by an Estate Owner absolutely entitled	84
III. Mortgage of Freeholds, formerly Copyholds, subject to unextinguished Manorial Incidents	85
IV. Mortgage of Leaseholds by Demise. Variations where Recitals are Omitted, and where a Sinking Fund Policy is included in the Security, and where part only of Premises are Mortgaged	87
V. Deed of Statutory Mortgage under section 117 of the Law of Property Act, 1925	89
VI. Mortgage of a Legal Estate of Freeholds. Provisions for continuance of loan for a Term Certain. Provisions as to Guarantee Policy effected with a Mortgage Insurance Company and for varying Statutory Powers of Sale	

MORTGAGES. PRECEDENTS—*continued*.

PAGE

and Leasing. Appointment of a Receiver. Variations where the Principal is to be repaid by Instalments, and where the Security extends to Further Advances . . .	90
VII. Second Mortgage of a Legal Estate in Freeholds . . .	91
VIII. Second Mortgage of a Legal Estate in Leaseholds, a Surety joining to covenant for payment of Principal and Interest. Variations where the Mortgage extends to Further Advances. Variation for renewable leaseholds . .	94
IX. Mortgage of a Legal Estate in Freeholds, a prior Mortgagee joining to Postpone his Security	96
X. Second Mortgage of a Legal Estate in Freeholds to a Prior Mortgagee who has postponed his Security	98
XI. Mortgage by Tenant for Life under a Strict Settlement for giving effect to a joint Power of Appointment, subject to Prior Charges. The Principal to be repaid by Instalments	99
XII. Mortgage by a Woman married after 1882 of her Freeholds for her Husband's benefit. Variations where the Wife was married and her Title accrued before 1883	102
XIII. Contributory Mortgage of Freeholds where the Money is advanced in Distinct Sums by different Mortgagees, part of the Money being advanced by Trustees	103
XIV. Mortgage to Trustees of a Will with the Consent of the Court given in an Administration Action	106
XV. Mortgage of Freeholds and Leaseholds settled in Strict Settlement by a Tenant for Life (who covenants for payment) for raising money required for Payment for an Authorised Improvement for Equality of Exchange or for discharging an Incumbrance on Settled Land, under his Settled Land Act powers	107
XVI. Mortgage of a Policy of Assurance effected by the Mortgagor on his own life, a Surety joining. Variations where the Policy is effected in the Mortgagee's name and for several Policies	110
XVII. Mortgage of a Life Interest in Real Estate and a Policy of Assurance on the Mortgagor's Life effected in his own name.	112
XVIII. Mortgage of a Life Interest in Personalty and of Policies on the Life of the Mortgagor	115
XIX. Mortgage by Equitable Tenant in Tail in Remainder creating a Base Fee, or an interest equivalent to a Base Fee, for securing a sum of Money payable in a certain Contingency to the Trustees of an Insurance Company. Covenant by Mortgagor when in Possession to execute Full Disentailing Assurance	117
XX. Mortgage of a Reversion in Fee by way of Indemnity to a Person who has become Surety for the Mortgagor. Power of Sale with the Concurrence of the Tenant for Life. Covenant for Production of Deeds. Variations for a share of a Reversion	120
XXI. Mortgage of a Vested Reversion of Personalty, Interest being accumulated till the Reversion falls in	122

MORTGAGES. PRECEDENTS— <i>continued.</i>	PAGE
XXII. Mortgage by Married Woman for her own benefit of her Reversionary Share of a Fund in Court, her title to which accrued after 1882, the Principal being made payable on the Reversion falling in or the Husband's death, the Husband joining to covenant for payment of Principal and Interest, and a Surety joining to covenant for payment of Interest.	124
XXIII. Mortgage of a Reversionary Interest in Settled Personalty, and a Policy on the Mortgagor's life, the Mortgage Debt being payable on the death of the Tenant for Life or the Mortgagor. Provision for accumulation at Compound Interest during life of Tenant for Life or Mortgagor, and for the Policy being kept up by the Mortgagee	126
XXIV. Mortgage by Married Woman for her Husband's benefit of a Contingent Reversionary Interest belonging to her for her Separate Use and a Policy on her life effected under the Married Women's Property Act, 1882. Provision for Continuance of Loan for a Term certain	128
XXV. Mortgage to a Building Society incorporated under the Building Societies Act 1874, with variations	131
XXVI. Mortgage to an Industrial and Provident Society by a Member to secure payment by Instalments according to the Rules. Express Power to Repair and Insure, and Express Powers of Sale and Appointing a Receiver, with restrictions. Variations for Further Advances	136
XXVII. Mortgage of Freeholds to Trustees to secure Present Loan and Future Advances, under a Power in a Settlement authorising the Tenant for Life to charge a limited sum for his own benefit	139
XXVIII. Creation of a Mortgage Term to secure Portions and the Costs of raising them	141
XXIX. Mortgage of Freeholds to secure the Re-transfer of Stock, and for payment in the meantime of Sums equal to the Dividends. Variations where Interest on the Sum which would be produced by Sale of the Stock is payable till Re-transfer	142
XXX. Mortgage of a Building Lease to a Married Woman, the Mortgage Money being her separate property. Provisions for Advances by Instalments as wanted, and for Continuance of Loan for a Term Certain. Power to Mortgagee to complete Buildings on Mortgagor's Default, &c.	144
XXXI. Mortgage of a Leasehold Public House to a Firm of Brewers	147
XXXII. Mortgage of Freeholds by Executors	151
XXXIII. Mortgage of the land of a Lunatic under the Lunacy Act, 1890, s. 117	153
XXXIV. Mortgage of Freeholds or Leaseholds, including Partnership Property, by Trustees, where the Legal Estate is vested in them upon Trust for Sale under the Transitional Provisions of the Law of Property Act, 1925	155

MORTGAGES. PRECEDENTS— <i>continued.</i>	PAGE
XXXV. Mortgage by Tenants in Common of Undivided Shares or Proceeds of Sale of Freeholds subject to an Annuity payable out of income	156
NOTE ON BILLS OF SALE	158-170
XXXVI. Bill of Sale of Personal Chattels, according to the Statutory Form, to be Registered. With Variations	171
XXXVII. Mortgage by a Firm of a Freehold and Leasehold Colliery and Fixed Machinery, &c., to secure an Account Current with a Banking Firm where the Security is Not intended to be a Bill of Sale	175
XXXVIII. Mortgage by Limited Company of Freehold and Leasehold Ironworks, Mines, and fixed Mining Plant, for securing payment of existing and future Bills of Exchange, subject to a Prior Charge, the Security Not being intended to be a Bill of Sale	180
XXXIX. Mortgage of a Building laid out in Flats, both Mortgagor and Mortgagee being Limited Companies	182
XL. Mortgage by a small Trader of a Leasehold House, with the Goodwill and Takings of his Business, to the Trustees of a Loan Society, the money to be repaid by Weekly Instalments. Variations where the Cashier of the Mortgagor is appointed Receiver	184
XLI. Mortgage of Share in a Partnership Business to a Firm of Solicitors to secure Costs and Advances. Variation where the Security extends to Future Costs	186
XLII. Mortgage of Renewed Lease by reference to and supplemental to a Prior Mortgage of the Surrendered Lease.	189
XLIII. Mortgage of Charity Estates pursuant to an Order of the Charity Commissioners to secure repayment of Principal and Interest by equal Annual Instalments extending over a given period. Variation for Principal payable at a Future Date. Power of Sale excluded	191
XLIV. Mortgage under Seal of Bonds and Shares of Companies incorporated under Special Acts and Limited Companies, some of the Shares being fully and others partially Paid-Up, Bearer Bonds and Scrip of a Foreign Government Loan and of an English Company, for securing past and future Trade Debts	195
XLV. Agreement under Hand preserving for the Mortgagor the right of voting in respect of Mortgaged Stocks and Shares	199
XLVI. Mortgage of Freight and Earnings of a Ship, and Policies of Insurance thereon, to accompany a Statutory Mortgage	200
XLVII. Agreement to accompany Statutory Mortgage of a Ship between two Firms of Shipowners	204
XLVIII. Mortgage by a Trustee in Bankruptcy so as to create a Floating Charge on the property of the Bankrupts, to a Bank advancing money for an Interim Dividend	206
XLIX. Memorandum under Seal to accompany Deposit of Deeds with Agreement to Execute a formal Mortgage	210

MORTGAGES. PRECEDENTS—*continued*.

PAGE

L.	Memorandum under Seal to accompany the Deposit of Deeds, and Agreement to Execute a Mortgage to secure an Account Current with Bankers. Variations where the Deeds are deposited by a Surety	213
LI.	Equitable Mortgage under Hand only, charging Land	215
LII.	Memorandum under Hand only, to accompany a Deposit of Deeds	216
LIII.	Memorandum by a Married Woman to accompany Deposit of Jewels handed to a Mortgagee as Further Security for the Mortgage Debt	216
LIV.	Memorandum under Hand only, to accompany Deposit of Deeds to secure an Account Current at a Bank	217
LV.	Memorandum under Hand only, to accompany Deposit of a Building Agreement to secure advances to be made thereunder	218
LVI.	Memorandum under Hand only, to accompany the Deposit of a Life Policy with the Issuing Office	219
LVII.	Memorandum under Hand only, to accompany the Deposit of Miscellaneous Securities to secure the payment of Bills of Exchange at maturity	219
LVIII.	Equitable Charge under Hand of an Undivided Share in Proceeds of Sale of Land for securing Several Sums advanced by Three separate Persons	220
LIX.	Mortgage of Freeholds by way of Collateral Security	221
LX.	Deed of Further Charge of Freeholds and Leaseholds Endorsed on the Mortgage. Variations for Supplemental or Independent Deed. Also, where there has been a Previous Further Advance, and where the deed is to secure Future Further Advances	222
XLI.	Deed of Further Charge of Freeholds and Leaseholds, the Original Mortgage having been Transferred, the rate of Interest and half-yearly days of Payment being Altered, and Additional Freeholds being added to the security	224
LXII.	Further Charge by way of Legal Mortgage	226
LXIII.	Deed of Further Charge to a Building Society incorporated under the Building Societies Act, 1874	227
LXIV.	Deed of Further Charge of a Life Interest in Personalty and Policies where a Fresh Policy is added to the Security, endorsed on the Original Mortgage	228
LXV.	Memorandum of Further Charge by Endorsement on the Mortgage, applicable to any kind of Property	230
LXVI.	Sub-Mortgage of Freeholds and Leaseholds	230
LXVII.	Mortgage of Freehold Building Land and Sub-mortgage of Building Agreement to secure Advances to be made to the Builder on behalf of the Mortgagor in performance of the latter's covenant. The Builder joins as surety to covenant for payment of Principal and Interest and otherwise. Variation where leases on some of the Plots have been taken up	232

MORTGAGES. PRECEDENTS—*continued*.

TRANSFERS OF MORTGAGES.

	PAGE
PRELIMINARY NOTE	238-239
LXVIII. Form of Transfer of Mortgage under s. 114 of the Law of Property Act, 1925. Variation where the Mortgagee joins	240
LXIX. Deed of Statutory Transfer of Mortgage under s. 118 of the Law of Property Act, 1925, Mortgagor not joining	240
LXX. Deed of Statutory Transfer of Mortgage under s. 18 of the Law of Property Act, 1925, a Covenantor joining	241
LXXI. Deed of Statutory Transfer and Statutory Mortgage combined under s. 118 of the Law of Property Act, 1925	242
LXXII. Transfer, by Endorsed or Supplemental Deed, of Mortgage on the Appointment of New Trustees of Freeholds and Leaseholds, the Mortgagor not being a Party, where the Mortgagees are Trustees. Variations where there is a Continuing Trustee	243
LXXIII. Transfer of Mortgage of Freeholds by Trustees of Building Society	245
LXXIV. Transfer of Part of Mortgage Debt effected by Declaration of Trust. Part transferred to be Postponed to part retained by Mortgagee	246
LXXV. Consolidation Deed where the Original Mortgagor is Dead and a Further Advance is made to his Executors. Short Form by reference to Schedules	247
LXXVI. Consolidating Mortgage effected to secure Original Mortgage transferred by Receipt and Further Advance to the Transferee	249
LXXVII. Transfer of Mortgage of Freeholds settled subject thereto to the Tenant for Life so as to keep the Security on foot for his Benefit, part of the property having already been Reconveyed	250
LXXVIII. Transfer under Hand only of an Equitable Mortgage created by deposit of Deeds and Agreement. A short form by indorsement	251
LXXIX. Transfer of Registered Bill of Sale of Chattels, the Mortgagor joining to Covenant for payment only	252
LXXX. Reconveyance by Mortgagee of Freeholds or Leaseholds by Endorsement on or Annexation to the Mortgage. Variations where Recitals are Omitted, where the Mortgage comprised Future Advances, and where the Mortgagee has Notice of Subsequent Incumbrances	253
LXXXI. Form of Receipt on Discharge of Mortgage	255

MORTGAGES. PRECEDENTS—*continued.*

PAGE

LXXXII. Reconveyance by Independent Deed by several Mortgagees (Trustees) of Freeholds to Tenant for Life as the Estate Owner of strictly settled land, the mortgage being paid off by the Trustees and no Transfer being desired and there having been a Further Charge and a Transfer of the Original Mortgage. Variations for Part of the Property having been sold with the Concurrence of the Mortgagees, where the Principal has been paid off by Instalments	256
LXXXIII. Reconveyance on behalf of Lunatic Mortgagee	258
LXXXIV. Receipt on Discharge of Statutory Mortgage of Freeholds or Leasholds under s. 120 of the Law of Property Act, 1925	259
LXXXV. Reconveyance of Part of Property in Mortgage on Part Payment of Debt, the Property consisting of a Life Interest in Realty, and Several Policies on the Mortgagor's Life	260
LXXXVI. Reconveyance by Mortgagee of Personality	261
LXXXVII. Endorsed Receipt on Discharge of Equitable Mortgage	261
LXXXVIII. Appointment of Receiver Contemporaneously with the Mortgage	262
LXXXIX. Appointment by Mortgagee of a Receiver under the Law of Property Act, 1925	263
XC. Agreement under ss. 99 (16) and 100 (10) of the Law of Property Act, 1925, extending the Statutory Powers of Leasing and accepting Surrenders. Variation for latter Power applicable to Mortgages executed before 1912	264
XCI. Agreement between Mortgagees and other Persons interested as to Deposit of Title-Deeds with Bankers on behalf of all Parties	265
XCII. Deed varying the Rate of Interest on a Mortgage Debt. Endorsed on Mortgage	266
XCIII. Declaration Converting a Mortgage for a Term of Years subsisting under the Transitional Provisions of the Law of Property Act, 1925 into a Charge by way of Legal Mortgage	267
XCIV. Undertaking of Mortgagor or his Solicitor to pay Costs in connection with Loan	267
XCV. Declaration Vesting the Whole Estate of the Mortgagor in the Mortgaged Premises in a Chargee by way of Legal Mortgage who has acquired a Title under the Limitation Acts. Variation for Mortgage of Leaseholds however created	268
XCVI. Declaration of Trust of Money Secured by contributory Mortgage taken in the names of Trustees where the Money is advanced by the Lenders in Unequal Shares	269
XCVII. Deed by a Tenant for Life Shifting an Incumbrance affecting Part of the settled land under the Settled Land Act, 1925, to Other Parts of the Settled Estate	270

MORTGAGES AS AFFECTED BY THE LAND REGISTRATION ACT, 1925.

	PAGE
PRELIMINARY NOTE	273-276
I. Mortgage effected by Registered Charge alone. Variations for a Charge by Trustees and for a Collateral Security . . .	277
II. Mortgage by Registered Proprietor of a Leasehold Public House to a Firm of Brewers, effected by a Registered Charge . . .	278
III. Form of Discharge of Registered Charge	280
IV. Transfer of a Registered Charge	280
V. Memorandum under Hand only to accompany Deposit of a Land Certificate or Certificate of Charge	280
VI. Memorandum under Hand only of an Intended Deposit of a Land Certificate or Certificate of Charge	281

MORTMAIN AND CHARITY.

PRELIMINARY NOTE	282-290
I. Conveyance to Trustees of Site for a Church	290
II. Agreement vesting the Patronage of a New Church in Trustees . . .	293
III. Conveyance of Land as the Site of a Mission Hall	294
IV. Regulations for the Meetings of Trustees	298
V. Settlement by way of Renewable Trust, of Proceeds of Sale of Freeholds and Stocks and Money, intended to be devoted to Religious or Charitable Purposes but to remain Private Property	299
VI. Diocesan Trust Deed	307

NOTICES.

I. Notice to debtor of assignment of debt	320
II. Notice to trustees of settlement or will of assignment of an equitable interest thereunder to a purchaser or mortgagee . . .	321

CONTENTS.

XV

NOTICES—*continued.*

PAGE

III. Notice to trustees of will of assignment of share of a residuary legatee to the trustees of his marriage settlement	321
IV. Notice to Trust Corporation	323
V. Notice to insurance office of assignment of a life policy pursuant to Policies of Assurance Act, 1867	323
VI. Notice of intention to pay off a mortgage	324
VII. Notice requiring payment off of mortgage	324
VIII. The same where money is payable on demand	325
IX. Notice by second mortgagee to first mortgagee	325
X. Notice to mortgagor of transfer of mortgage	325
XI. Notice of transfer of several mortgages	326
XII. Notice by purchaser of equity of redemption to mortgagee	326
XIII. Notice from mortgagee or purchaser of a rent-charge to owner or tenant of property charged	326
XIV. Notice by mortgagee to tenant to pay rent to him	327
XV. Notice by receiver of mortgaged property to tenant to pay rent to him	327
XVI. Notice determining guarantee	328
XVII. Notice by partner of his intention to retire	328
XXVIII. Notice of expulsion of a partner	328
XIX. Notice of dissolution of partnership	328
XX. Notice to quit given by landlord to tenant	329
XXI. Notice to quit given by tenant to landlord	330
XXII. Notice by landlord to tenant demanding possession after expiry of lease	330
XXIII. Notice by lessor or lessee to determine a 21 years' lease at the expiration of the first 7 or 14 years, pursuant to a power in the lease	331
XXIV. Notice by lessor or lessee to determine an agricultural lease at the end of the term	331
XXV. Notice by landlord to tenant to repair	331
XXVI. Notice by lessor to lessee to repair preparatory to a re-entry	332
XXVII. Notice by lessee to lessor to repair	333
XXVIII. Notice by under-lessee of claim for ejectment	333
XXIX. Notice to landlord by tenant of damage done by game	334
XXX. Notice to landlord by tenant claiming compensation for improvements or damage done by game	334
XXXI. Notice to landlord by tenant claiming compensation for disturbance	334
XXXII. Notice from vendor's solicitor to purchaser to complete purchase	335
XXXIII. Notice that vendor will annul the sale unless the purchaser withdraws requisition	335
XXXIV. Notice to Lord of Manor to ascertain Compensation	336
XXXV. Notice by tenant for life to trustees of intention to sell, &c., under S. L. Act	336
XXXVI. Notice by solicitors of tenant for life to trustees of intention to exercise powers of S. L. Act	337
XXXVII. Waiver by trustees of settlement or will of notice under S. L. Act	337
XXXVIII. Advertisement of change of surname to be published in a newspaper	338
XXXIX. Statutory notice to creditors	338
XL. Notice by a husband repudiating liability for his wife's debts	339

PARTNERSHIP.

CLAUSES.

Constitution, Duration, &c.	PAGE
1. Duration and style of partnership for two partners	341
2. The same for three or more partners	341
3. Registration of firm under Registration of Business Names Act, 1916	342
4. Description of partners as limited and general	342
5. Registration of partnership under Lim. Partnership Act, 1907	342
6. Power to determine or retire from partnership by notice	343
7. Power to compel retirement of one partner	343
8. Power to dismiss probationary partner	343
9. Power of expulsion in case of breach of duty, &c.	343
10. Provision for conversion of partnership into limited partnership	344
11. Option to general partner to become limited partner	345
12. Option to limited partner to become general partner	345
13. Exclusion of s. 33 (1) of the P. Act, 1890	346
14. Place of business	346
15. Certificate of registration	346

FINANCIAL PROVISIONS OF THE PARTNERSHIP.

(i). CAPITAL.

1. Contribution to capital in equal shares	346
2. The same in unequal shares	346
3. The same in shares proportionate to shares of profits	347
4. Shares in which capital is to be owned	347
5. Capital where no amount fixed	347
6. Stock-in-trade, &c., to be taken at a valuation	347
7. Lease of business premises vested in one partner to be held in trust for firm	347
8. Provision where capital consists wholly of the assets and liabilities of an old business	348
9. Provision for house of business and office furniture remaining property of one partner, subject to the user thereof by the firm at a rent	348
10. Increase of capital	349
11. Interest on capital	349
12. The same, another form	349
13. Loans by partners to the firm	349

(ii). PROFIT AND LOSS.

14. Incidence of outgoings	350
15. The same applicable to professional partnerships	351
16. Appropriation to firm of profits from appointments held by a partner	351
17. Provision for setting aside reserve fund	351
18. Division of net profits	352

CONTENTS.

xvii

PARTNERSHIP. (ii). PROFIT AND LOSS— <i>continued</i> .	PAGE
19. Minimum sum guaranteed to one partner	352
20. Option to one partner to purchase a further share of the business	352
21. Drawings	353
22. Surplus profits above authorised drawings to be capitalised .	353

BUSINESS REGULATIONS.

(i). MANAGEMENT.

1. One partner to be manager at a salary	354
2. Senior partner to have control	354
3. Sleeping or limited partner	354
4. Residence	354
5. Attention to business	354
6. The same, where some partners not to be bound to attend to business	355

(ii). DUTIES OF PARTNERS.

7. To be just, etc.	355
8. To give information	355
9. Each partner to pay his private debts	355
10. Negative provisions—	
(i). Not to carry on business	355
(ii). Not to compound debts	356
(iii). Not to become surety, &c., nor allow property to be taken in execution	356
(iv). Not to assign or mortgage share	356
(v). Not to introduce partner	356
(vi). Not to pledge credit of firm	356
(vii). The same, another form	357
(viii). Not to give credit when forbidden	357
(ix). No contract to exceed a certain amount	357
(x). Hiring clerks, &c.	357
(xi). Journeys	357

(iii). BANKING.

11. Bankers	357
12. Provision as to moneys received and paid on account of partnership	357
13. Money and securities belonging to clients	358
14. Cheques	358

ACCOUNTS.

1. Accounts to be kept	358
2. Annual general account	358

DISSOLUTION CLAUSES.

1. Ordinary provision for winding-up on dissolution	359
2. The same, short form referring to the Partnership Acts	360

PARTNERSHIP. DISSOLUTION CLAUSES— <i>continued.</i>	PAGE
3. The same where assets are to vest in senior partner	360
4. Winding up on dissolution where the assets may be of a complex character, providing for division in specie	361
5. Dissolution, the partners to have option in succession to succeed to the whole business	362
6. Provision for purchase by continuing partners of the share of partner dying, &c.	363
7. Option of purchase by continuing partners of the share of partner dying, &c.	365
8. Proviso for event of annual account preceding death, &c., of a partner not having been taken	366
9. Provision for death or voluntary retirement. Short form, where deceased or retiring partner is to have profits up to his death, or retirement	366
10. Amount due to outgoing partner in respect of capital to be paid by instalments	367
11. Amount due to outgoing partner in respect of capital to remain as a loan during the partnership term	367
12. Option to surviving partners to retain share of deceased partner in business, his representatives being sleeping partners	368
13. Power for representatives of deceased partner to continue as sleeping partners	369
14. As to rights of sleeping partners	369
15. Power to surviving or continuing partners to purchase lease of house of business on death or retirement of one partner	370
16. General provisions as to execution of deeds, &c. on death of partner	370
17. Provision for determination by notice by reference to provisions for death	371
18. Provision as to share of expelled partner	371
19. Accruer of shares on determination of partnership as regards one partner	371
20. Mode of valuing goodwill	372
21. Publication of notice of retirement of partner	372
22. Outgoing partner not to carry on business	372
23. Power to dissolve in case of losses	372

PROVISIONS FOR WIDOW AND FAMILY.

1. Provision for payment of annuity to widow of one partner during her life	373
2. Provision for securing annuity to family of a deceased partner during the partnership term	374
3. Power to a partner to charge annuity for his family on his death or retirement	374
4. Power to senior partner to introduce a son into the firm. Similar power to junior partner	375
5. Another form giving the like power to any partner	375
6. Power for limited partner to introduce son into firm	376

PARTNERSHIP. PROVISIONS FOR WIDOW AND FAMILY— <i>continued.</i>	PAGE
7. Provision for securing the admission of two sons of the senior partner into the business, adapted to a partnership for life. Full form	377
8. General power to senior partner to introduce new partners	379

MISCELLANEOUS.

1. How notices to be given	379
2. Questions to be decided by majority of partners	379
3. Arbitration clause. Variation	379-380
4. Mutual release in respect of former deed of partnership	380

Precedents :

I. Articles of Partnership between Two Traders for a Term of Years, determinable on Notice. Concise Form relying principally upon the Partnership Act, 1890. Variations where the Partnership is for Life determinable on Notice	381
II. Articles of Partnership between Two Traders for a Term of Years, determinable on Notice, formed to continue the Business of one of them. Full Form. Variation where a Premium is taken	384
III. Articles of Partnership between Three Traders for a Term of Years, determinable on Notice. Variations where the Partnership is formed to continue the Partnership Business of two of them the Goodwill of which is vested in the Senior Partner	387
IV. Articles of Partnership between Two Solicitors for a Term of Years, determinable on Notice, formed to continue the Business of one of them	389
V. Articles of Limited Partnership between Three or more Persons for a Term of Years	394
VI. Articles of Limited Partnership between Three Persons formed for the purpose of continuing the Business and advancing the Infant Children of two of them	397
VII. Declaration of Trust of Freehold and Leasehold Properties by Two Partners in favour of the Firm. To accompany a Partnership Deed	400
VIII. Deed vesting the Legal Estate in Partnership Property in Old and Newly Admitted Partners	401
IX. Extension of Term of Partnership by Deed endorsed on or appended to the Articles	402
X. Deed of Accession on the Admission of a Son of a Partner into the Firm pursuant to a Provision contained in the Articles of Partnership. Variations where the deed is Endorsed on or Annexed to the Articles	403
XI. Deed for Execution upon Conversion of an existing Partnership into a Limited Partnership	405
XII. Agreement for Sale by a Retiring Partner with the Concurrence of the Continuing Partners of his Share in the Partnership to an Incoming Partner. Variations where the continuing Partners do not Concur	409

PARTNERSHIP. PRECEDENTS— <i>continued.</i>	PAGE
XIII. Deed of Dissolution of Partnership between Two Partners on the Retirement of one, where the business is to be continued by the other	411
XIV. Deed of Dissolution on Death of One of Three Partners, where part of the Assets consists of Real and Leasehold Property, which is transferred by a Separate Deed, and where the Share of the Capital of the Deceased Partner is to remain as a Loan to the Firm, payable by Instalments, under a Provision in the Articles, to be secured by Deed of Covenant or Mortgage	416
XV. Deed of Release, &c., between Executors of Deceased Partner and Surviving Partner	418
XVI. Assignment by a Retiring Partner to his Two Co-partners of his Share in Freehold and Leasehold Properties and fixed Machinery, &c., which are in Mortgage (to accompany a Deed of Dissolution)	419
XVII. Acknowledgment by Retiring Partner or the Representative of a Deceased Partner of Satisfaction of his claims against the Firm	421
XVIII. Bond of Indemnity against Partnership Debts on Dissolution	421
XIX. Deed of Covenant by Continuing Partners to secure the Capital of a Deceased Partner, which, pursuant to the Articles of Partnership, is to remain as a Loan during the Partnership Term, the Interest being dependent on the rate of Profits .	422

PATENTS.

Clauses in Assignments and Licences :	PAGE
1. Recital of application for patent since 1883	426
2. The same, and acceptance of complete specification	426
3. Recital of grant of letters patent	426
4. Title to patent by assignment	427
5. Short recital of title to patent	427
6. Recital of foreign patent	427
7. Grant of licence	427
8. The same. Various restrictions	428
9. Assignment of patent	428
10. Covenant to pay share of net profits in licence, Variations for assignment	428
11. Covenant to pay royalties. Variations where there is a fixed minimum rent	429
12. Covenant to keep accounts, and permit inspection	429
13. To furnish half-yearly account and verify same	430
14. Covenant to avoid revocation, &c.	430
15. To affix labels	430
16. The same, to machines	431
17. Power to patentee to inspect factories	431
18. Licensee not to use invention except as licensed	431
19. Patentee to give licensee or assignee assistance	431

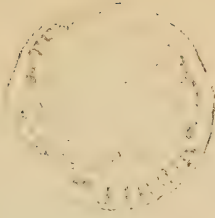
PATENTS—*continued.*

PAGE

20. Patentee to communicate further improvements to licensee or assignee	431
21. Provision as to infringements	432
22. The same, another form	432
23. Licensee not to dispute validity of patent	432
24. Licensee not to assign or grant sub-licences	432
25. Patentee not to use invention or grant other licences	432
26. Power to either party to determine licence on notice	433
27. Power to determine licence on non-payment of royalties, &c.	433
28. Power to determine licence if manufacture insufficient	433
29. Power to determine licence on becoming vested in more than one person	433
30. Provision determining licence on death of licensee	434
31. Provision as to fees where paid by licensee	434
32. The same, where paid by patentee	434
33. Covenants for title in licence	434
34. Covenant for validity	434
35. Clause excluding warranty	435
36. No licence to be granted on more favourable terms	435
37. Covenant by patentee not to apply for amendment	435
38. Arbitration clause	435
39. Interpretation clause	435

Precedents :

I. Assignment of Letters Patent	436
II. Agreement by a Patentee to assign his Patent Rights in Foreign Countries	437
III. Agreement for Sale of Patent	439
IV. Agreement for Sale of Patent Rights where the Patent has been applied for but not yet granted	440
V. Agreement for Sale of Patent to a Promoter who is to form a Company	440
VI. Mortgage of Letters Patent. Variation where a Sinking Fund Policy is included in the Security	442
VII. Licence to Use Letters Patent, with Variations for an Exclusive or Restricted Licence, and for the Licensees being Partners or a Company	444
VIII. Licence (not exclusive) by Deed Poll to Use a Patent in consideration of a Sum paid down. A short form	446
IX. Assignment of Licence to use Letters Patent	447
X. Agreement for Working a Patent	448



MORTGAGES (a).

PRELIMINARY NOTE.

ALTHOUGH an agreement to take up debentures or debenture stock is enforceable under the Companies C. Act, 1908, s. 105 (*Re Smelting Corp'n*, [1915] 1 Ch. 472) an agreement to lend money on mortgage cannot be enforced: *South African Territories v. Wallington*, [1898] A. C. 309. An intending mortgagee therefore may and invariably does insist upon title to the proposed security being made to his satisfaction before advancing his money. Section 42 of the Law of Property Act, 1925, in which the expression "purchaser" includes an intending mortgagee (see s. 205 (1) xxi.) serves to emphasise the necessity of obtaining the best title available in the circumstances. Where, for instance, the property is settled property, the intending mortgagee should require a mortgage of the legal estate from the tenant for life under s. 16 of the S. L. Act, 1925, rather than accept an equitable charge from a person entitled to a general power of appointment over the settled land: see Prec. XI., *post*, p. 99; and where the property is subject to a trust for sale should require a mortgage of a legal estate created by the trustees under s. 3 (ii) of the L. of P. Act, 1925, rather than accept an equitable charge from a person interested in the proceeds of sale: see Prec. XXXIV., *post*, p. 155.

Title to
be made.

Where the subject of the proposed security is a legal estate, a general recital of title will usually suffice; but particular recitals may sometimes be required to show the creation of any legal estates charges or interests or any equitable interests subject to which the security is given.

The L. P. Act, 1925, has entirely altered the form of mortgages of legal estates in land by providing that all such mortgages shall be either by the demise of a legal term of years out of the fee simple, or in the case of leaseholds by subdemise out of the term of years absolute, or by a charge by way of legal mortgage on the fee simple or term of years absolute, which in both cases remain vested for legal estates in the mortgagor. Mortgages by demise were frequently used at the beginning of the last century in the case of freeholds and even in modern times were occasionally met with, and leaseholds were almost invariably mortgaged in this manner, whilst charges by way of legal mortgage are analagous to the charges on registered land under the Land Transfer Acts, 1875 and 1897.

Alternative
forms of
mort-
gages of
legal
estates.

Part III. of the Act, which deals exclusively with mortgages, is worked out so as to apply to mortgages by demise, and by s. 87 a mortgagee holding

Charges
by way

(a) Mortgages affected by the L. R. Act are collected, *post*, p. 273, *et seq.*;

As to stamps on mortgages, see the Stamp Act, 1891, Sched., tit. MORTGAGE, &c.; amended as to stamps on additional or substituted securities by the Rev. Act, 1903, s. 7. As to stamps on mortgages of life policies, see Stamp Act, 1891, s. 118.

Stamps.

of legal
mort-
gage.

a charge by way of legal mortgage has the same protection, powers, and remedies, including the right to take proceedings to obtain possession from occupiers and persons in receipt of the rents and profits as a mortgagee by demise. Charges by way of legal mortgage do not confer legal estates, but such estates are implied by the Act when the mortgagee comes to enforce his security. Past experience of the working of charges on registered land which under the L. T. Acts, 1875 and 1897, did not confer legal estates (though this is not the case under the Land Registration Act, 1925), and the consequent demand, especially in the case of large loans likely to be outstanding for some time, for mortgages off the register for the purpose of vesting the legal estate in mortgagees, leaves it open to doubt whether the alternative method of a charge by way of legal mortgage will ever become very popular. A form of such a mortgage will be found *post*, p. 84, but the remainder of the Precedents contained in this edition are expressed to be by demise, though the alternative form of charge is in each case added as a footnote.

The T. Act, 1925, s. 5 (2) enables trustees having power to invest in real securities to accept charges by way of legal mortgage and to convert existing mortgages into such charges.

All legal
mort-
gages
create or
imply
legal
forms.

It is most important to remember that the scheme of the Act sweeps away the protection formerly given by the possession of the legal estate in the mortgaged property and the priority conferred thereby over incumbrances where title was equitable only, though the Act nowhere in terms so provides.

All mortgage terms, subsequent as well as first, will confer legal estates in the terms, and a mortgagor will have a legal estate in fee simple, or in the case of leaseholds in the head term, in the mortgaged property subject to redemption.

Mort-
gages of
freeholds.

By s. 85, mortgages of legal estates in fee simple can only be created by demise for a term of years absolute or by charge by way of legal mortgage, and the section applies whether or not the land is registered under the L. R. Act, 1925, or the mortgage is expressed to be by trust for sale or otherwise. Any purported conveyance of an estate in fee simple by way of mortgage, operates to create a term of 3,000 years from the date of the mortgage in the first mortgagee and a term one day longer than the prior term in the case of second or subsequent mortgages. The plan has been adopted in the following Precedents of making the mortgage terms specially created, 1,000 years instead of 3,000 years which the Act has fixed as the period for compulsorily converted mortgages, so as to afford an indication to conveyancers in the future of the type of mortgage with which they will be dealing.

All mortgage terms, however created, are subject to cesser on redemption, and a first mortgagee has the same right to the custody of the title deeds as if his security comprised the fee simple.

All powers to mortgage or to lend upon mortgage of the fee simple are to be construed as powers to mortgage by demise or by charge by way of legal mortgage and to lend upon such securities.

Mort-
gages of
lease-
holds.

By s. 86 mortgages of terms of years absolute can only be created by sub-demise for a term less by one day at least than the mortgaged term or by a charge by way of legal mortgage, and, as in the case of freeholds, the section applies whether or not the land is registered under the L. R. Act, 1925, or the mortgage is expressed to be by trust for sale or otherwise. Any purported assignment of the term by way of mortgage operates to

create a term, ten days less than the term expressed to be assigned, and in the case of subsequent mortgages a term one day longer than the term ranking immediately ahead if the length of the mortgaged term permits, and in any case one day less than the term expressed to be assigned.

All the mortgage terms are subject to cesser on redemption and the custody of the deeds is given to the first mortgagee as if his mortgage had been created by assignment. Powers to mortgage and lend on mortgages, in the above mentioned forms are construed as in the case of similar powers relating to freeholds. Owing to the power of assigning the leasehold reversion when exercising his power of sale, which s. 89 (as to which see *post*, p. 51) vests in a mortgagee of leaseholds, there is no longer, except in the cases below mentioned, any need to declare a trust of the reversion expectant on the mortgage sub-term or to appoint the mortgagee attorney of the mortgagor to assign the reversion to a purchaser. The power to sell the leasehold reversion is without prejudice to any incumbrance or trust affecting the leasehold reversion which is paramount to the mortgage and does not apply at all if the mortgage comprises part only of land demised by a lease at a rent (not being a nominal rent) which has not been apportioned, s. 89 (6). An irrevocable power of attorney will still be required by the mortgagee in the last mentioned case. It is specifically provided that where the lease contains a covenant against subdemising without licence such licence shall not be unreasonably withheld.

A submortgage is effected by the creation of a derivative term out of the term subsisting under or created or implied in the original mortgage or by a charge of the original mortgage term by way of legal mortgage.

A mortgage, however made, and whether legal or equitable, which is accompanied by the deposit of the title deeds relating to the mortgaged property, ranks as a first mortgage. This precedence is not given in terms by the Act, but s. 13 provides that the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, shall not be prejudicially affected. As to the protection given by possession of the title deeds under the old law, see *Walker v. Linom*, [1907] 2 Ch. 104; *Hudston v. Viney*, [1921] 1 Ch. 98. Section 97 provides that all mortgages other than those accompanied by the deposit of the title deeds shall rank for priority in the order in which they are registered as land charges under the L. C. Act, 1925, in which Act they are called "puisne mortgages." The last mentioned section does not affect charges on registered land or mortgages of land situate within the jurisdiction of a local deeds registry.

Apart altogether from the obtaining of priority, registration of a puisne mortgage is desirable, as s. 198 of the L. P. Act, 1925, makes such registration actual notice, and s. 96 (1) does not extend to protect a paid off mortgagee from handing over the title deeds to the wrong person if he has had notice of a better claim.

The expenses incidental to registration form part of the land charge, and are recoverable on the day fixed for payment of any part of the land charge next after they are incurred: L. C. Act, 1925, s. 12 (1).

The right to tack is abolished, except in the case of further advances: s. 94 (3); and further advances have priority over subsequent mortgages, both legal and equitable, in the following cases, whether or not the prior mortgage was expressly made for securing further advances: (i) by arrangement with the subsequent mortgagee, or (ii) where the prior mortgagee had no notice of the subsequent mortgage at the time of making the further

Sub-mortgages.
Priorities.

Puisne mortgages.

Tacking and further advances.

advance, or (iii) if the prior mortgage imposed a liability on the prior mortgagee to make further advances, in which case notice of the subsequent mortgagee is immaterial. This last provision definitely reverses the inconvenient rule laid down in *West v. Williams*, [1899] 1 Ch. 132 : s. 94 (1). Where the prior mortgage is expressly made for securing a current account or other further advances, the registration of a subsequent mortgage as a land charge or in a local deeds registry, provided such registration is made after the prior mortgage or after any search made by the prior mortgagee, whichever be the later date, is not alone to be notice to the prior mortgagee of the existence of the subsequent mortgage : s. 94 (2). The operation of this section does not extend to charges on registered land : s. 94 (4).

Consolidation.
Possession.

The restriction on consolidation is continued by s. 93 unless a contrary intention is expressed in the mortgage deeds or any of them.

Nothing in the Act affects prejudicially the right of a mortgagee to take possession of the mortgaged land : s. 95 (i) ; whilst by s. 98 a mortgagor in possession or in receipt of the rents and profits may, provided the mortgagee has not given notice of his intention to take possession, sue in his own name for possession or recovery of the rents and profits and recover damages for trespass or other wrong unless the cause of action arises on a lease or contract made jointly with another person. His right to take action in right of any legal estate vested in him or otherwise, is expressly preserved.

Foreclosure.

An order for foreclosure absolute, vests in the mortgagee the fee simple, in the case of a mortgage of freeholds (s. 88 (2)), and in the case of a mortgage of leaseholds, the leasehold reversion affected by the mortgage, and any subsequent mortgage term without giving rise to any forfeiture for want of a licence to assign (s. 89 (2)), subject in both cases to any legal mortgage having priority to that foreclosed and to any money secured thereby. The foreclosed mortgage terms and any terms or charges by way of legal mortgage subsequent thereto, become extinguished and merge. Submortgages are treated as if the derivative terms had been created out of the fee simple or leasehold reversion respectively, and can be foreclosed with the like results : ss. 88 (5), 89 (5).

Title under the Limitation Act.

A mortgagee of freeholds who has acquired a title under the Limitation Acts, may enlarge the mortgage term under the statutory power, contained in s. 153, discharged from the mortgage or where the mortgage was made by charge by way of legal mortgage, may by deed declare that the fee simple is vested in him so discharged : s. 88 (3) ; while a mortgagee of leaseholds acquiring a similar title may by deed declare that the leasehold reversion affected by the mortgage is vested in him free from any right of redemption, in which case the reversion shall without giving rise to a forfeiture for want of a licence to assign vest accordingly, the mortgage term or any other mortgage term or charge by way of legal mortgage affected by the title so acquired merging in the leasehold reversion or being extinguished unless the contrary is expressly provided in the deed : s. 89 (3).

Provisions where part only of leasehold premises are mortgaged.

The foregoing provisions contained in s. 89 with regard to foreclosure of, and the acquiring of, a title under the Limitation Acts to leaseholds are, by s. 89 (6), only to apply where the mortgage comprises the whole of the land included in the leasehold reversion unless the rent has been legally apportioned or unless a rent of no money value or no rent is reserved, and unless the lessee's covenants and conditions have been apportioned either expressly or by implication.

Section 11 (1) of the L. P. Act, 1925, renders the registration in the Middlesex and Yorkshire Deeds Registries of memorials of instruments unnecessary, unless the instrument operates to transfer or create a legal estate, or to create a charge thereon by way of legal mortgage, and further provides that registration of an instrument not required to be registered, shall not affect any priority. All mortgages of legal estates in these two counties, even if accompanied by the deposit of the title deeds, will require registration in the appropriate deeds registry, and such registration by s. 197 (1) operates to give to all persons and for all purposes actual notice of the creation or transfer of the legal estate, or the creation of the charge by way of legal mortgage, but without prejudice to the provisions of s. 94 as to further advances. Subsequent legal mortgages of land in the register counties, are not strictly puisne mortgages and are expressly excepted from the priorities conferred by registration or land charges by s. 97. All such mortgages derive their priorities from the Register Acts themselves, as to which, see *Williams V. & P.*, 3rd ed., p. 361; and from the provisions of s. 197 (1) of the L. P. Act, 1925, making registration actual notice. Equitable incumbrances affecting legal estates in land in these two counties are incapable of registration in the local deeds registries on the same footing as incumbrances transferring or creating legal estates, but are capable of being, and should be registered as land charges. The ordinary land charges register replaces the Middlesex Deeds Department, for registration of this class of incumbrance on land in Middlesex: L. C. Act, 1925, s. 18, whilst the same incumbrances on land in Yorkshire are, by s. 10 (6) of the L. C. Act, 1925, to be registered in the local registries, but with effect as land charges. Though s. 97 of the L. P. Act, 1925, which gives all incumbrances priority in accordance with their dates of registration as land charges, expressly excepts from its operation registration in local deeds registries, the position of land charges affecting legal estates in land in these counties, registered either in the Land Registry, as in the Yorkshire Registry, is saved by s. 198 (1) of the L. P. Act, 1925, which makes such registration actual notice to all persons and for all purposes.

Mortgages of equitable interests in land and all mortgages of interests arising under a trust for sale of land and of pure personalty are made in the same form as if the Act had not been passed. It must be remembered that life interests, entailed interests, and all remainders and reversions in land are now equitable interests only. The priorities of successive mortgagees of such interests are regulated by the order in which they give notice of their interests to the trustees of the settlement or other persons as provided by s. 137, and they may in some cases, but at their own cost, require a memorandum of the dealing creating their interest to be endorsed on the instrument creating the trust and the instrument so endorsed is to be produced to them. Where the settlement or other instrument creating the mortgaged interest so provides, notice may be given to a trust corporation: s. 138.

The law relating to the following incidents of mortgages will be found discussed at the following pages: Transfers, *post*, p. 238; Powers of Sale, *post*, p. 51; Powers of Leasing, *post*, p. 63; and Appointments and Duties of Receivers, *post*, p. 77.

A formal reconveyance of any mortgage is no longer necessary where the entire debt is paid off, though it still may be required by a mortgagor. By s. 115 of the L. P. Act, 1925, a receipt endorsed or written at the foot of, or annexed to, a mortgage stating the name of the payer and executed

Local
deeds
registries.

Mort-
gages of
equitable
interests
in land
and of
person-
alty.

Recon-
veyance.

by the mortgagee legally entitled to give a receipt for the mortgage money, and in the case of a further charge either referring to all the deeds securing the money or to the aggregate of the money secured, operates to merge the mortgage term in the reversion immediately expectant thereon, or, where the mortgage was not by demise, to reconvey the mortgaged interest to the person who before the signing of the receipt was entitled to the right to redeem. The receipt in either case discharges the property from all principal and interest secured by the mortgage, but without prejudice to any lease or other interest paramount to the estate or interest of the mortgagee. If it appear from the receipt that the payer is not the person entitled to the immediate equity of redemption, the receipt operates as a transfer unless (i) it is expressly otherwise provided, or (ii) the payment is made out of capital moneys or other moneys in the hands of a personal representative or trustee, properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt shall operate as a transfer.

A form of the statutory receipt will be found, *post*, p. 255. All the covenants which would have been expressed in a reconveyance, subject to any paramount interest, will be implied in the receipt. A mortgage term which has been discharged becomes, under s. 116, a satisfied term, and ceases but without prejudice to the right of a tenant for life or other person having a limited interest only in the equity of redemption to keep it alive by transfer or otherwise. But a mortgagor has no right to keep a discharged mortgage alive to the prejudice of subsequent incumbrancers, apart from the last mentioned case : s. 115 (3). It is further provided by s. 5 that where the purposes of a term limited out of either freehold or leasehold land have become satisfied so that the term either by express declaration or by construction of law becomes attendant upon the reversion expectant thereon the term shall merge in that reversion. The stamp on the receipt is the same as if the receipt were in reconveyance under seal : s. 115 (5).

Statutory
mort-
gages.

Statutory mortgages and the special forms of transfer applicable thereto are governed by ss. 117, 118, and will be found, *post*, pp. 89 and 241, such mortgages are discharged by a receipt in form 5 of the Fourth Schedule of the Act.

Regis-
tered
land.

A preliminary note dealing with registered land will be found, *post*, p. 273.

RECITALS (b).

TITLE.

1. WHAS the borr is the este owner in respect of the fee simple of the ppty hby mtged free from incumbces (d). Title of estate owner of freeholds.
2. WHAS the borr is under & by virtue of the will dated, &c., & proved, &c., of X. who died on the — day of — [a settle-
mt or trust instrumt dated, &c., & made, &c.], entitled to a reversionary intt expectant on the death of Y. in fee simple or to the annual income durg his life from or to an entailed intt in theppty mentd in the schdle hto free from incumbces. Title to equitable interests in land.
3. WHAS by a lease, dated, &c., & made, &c., All, &c., *pceels in full from lease*, or “the leasehold ppty hby mtged (togr with other leasehold ppty)” (f) with the appurtenances throf were Title under lease (e).

(b) See the forms of recitals under “CONVEYANCES ON SALE,” in Vol. I., most of which are also applicable to mortgages and other assurances. In simple cases recitals in mortgages can generally be omitted altogether.

The following forms of recitals and clauses in mortgages are for the most part, for simplicity and to avoid repetition, applicable only to one mortgagor and one mortgagee. The variations required for several mortgages would be little if anything more than the mere substitution of the plural for the singular, except where otherwise indicated. The variations for several mortgagors would generally be too special and dependent on the particular circumstances to be given except in the complete precedents.

(c) The plan is adopted, in the following forms and precedents relating to mortgages, of using the words “the borrower” and “the mortgagee” in place of the names of the parties respectively bearing those characters. These designations should be attached to the appropriate parties after their description at the commencement of the deed. A covenant entered into by a person with himself and one or more other persons is by s. 82 (1) of the L. P. Act, 1925, construed as capable of being enforced as if it had been entered into with the other person or persons alone; and sub-s. (2) of the same section operates retrospectively on such covenants entered into before the 1st of January, 1926, thereby avoiding the decisions in *Ellis v. Kerr*, [1910] 1 Ch. 529; and *Napier v. Williams*, [1911] 1 Ch. 361. The employment of an interpretation clause is unnecessary, see *post*, p. 83.

(d) Compare form I., Vol. I., p. 462. The remaining forms of recitals there given under the heading “Title” may be similarly adapted, where applicable, to the case of mortgages.

(e) Where there are several leases they should be recited separately, though occasionally the recitals may be combined as in f. 44, Vol. I., p. 452. For variations in the recital of the devolution of the mortgagor’s title in that case, see Vol. I., p. 453, ff. 47, 48.

(f) Where the lease comprises other property than that mortgaged the parcels will be described in the operative part.

Varia-
tions for
several
mort-
gagees or
mort-
gagors

demised [by the sd A.] to the borr, from the — day of —, for the term of — yrs, subjt to the paymt of the rent thby reserved, & the covts by the lessee & condons thrin contd.

Devolu-
tion of
title to
lease.

4. WHAS by divers mesne assurances, acts in the law & events & ultimately by an assignmt dated, &c., & made, &c., the premes comprised in the recited lease have become absolutely vested in the borr for all the residue of the sd term of — yrs subjt to the rent reserved by & the covts & condons contd in the sd lease.

Title
subject to
leases,
restrict-
tive cove-
nants,
and mort-
gages.

5. WHAS the borr is the este owner in respect of the fee simple of the ppty hby mtged subjt to the leases affecting the same [pts throf] wch are specified in the first schdle hto & to the restrictive covts imposed thron [on pts throf] by the indres [deeds] specified in the second schdle hto [& registered as land charges under the L. C. Act, 1925], & to the mtges [charges] (hrinar called the scheduled mtges [charges]) specified in the 1st column of the third schdle hto for securing to the several psons mentd in the 2nd column throf the several sums & intt thron respdy mentd in the 3rd column throf.

Title to
life en-
dowment
or sink-
ing fund
policy or
policies
(a).

6. WHAS the borr is entitled to the poly or “sevl pols” of assuree on his life, or “the endowmt [sinking fund] poly” “sevl endowmt [sinking fund] pols” hby mtged [mentd in the schdle hto] and has handed the same to the mtgee.

The same
effected
in name
of mort-
gagee.

7. WHAS the borr as pt of the intd seey has effected a poly of assuree in the name of the mtgee for the sum of £—— payable on the death of the borr [or on the — day of — whichever shl be the earlier] with the — Assuree Socy, dated, &c., nod —, & under the annual premium of £ — [reducible as thrin mentd] [or, the sevl pols of assuree in the name of the mtgee hrinar mentd, namely a poly for the sum of £——, payable, &c., with the — Assuree Socy, dated, &c., nod —, & under the annual premium of £——, [reducible as thrin mentd], a poly, &c., or, “the sevl pols mentd in the schdle hto”].

Title to
issue or

8. WHAS the borr is entitled to a fully pd-up poly for the sum of £—— payable on the death of the sd X [in the lifetime of

(a) It is generally better to give the particulars of the policies assigned in the operative part or in a schedule, as it facilitates the making out of the necessary notices of the assignment to be given to the offices; see Vol. I., p. 490.

the borr] leaving issue [male] or having had issue [male] who attained the age of twenty-one yrs, *or for a survivorship policy*, “payable on the death of the borr if he shl die in the lifetime of the sd X.” survivor-
ship
policy.

9. WHAS a poly of assuree has been agrd to be effected with the — Co Ltd (hrinar called the Co) & is intd to be issued immedly on the exon of these psnts whby in conson of an annl premium of £—— the Co will guarantee to the mtgee, his exs, ads, & assns, the paymt of the sd ppal sum of £—— & the intt thron in mner in the sd poly mentd & subjt to the condons endorsed thron. Guaran-
tee
policy (b).

10. WHAS under & by virtue of a mtge dated, &c., & made between A. [*or the borr*] of the one part & B. [*or the mtgee*] of the other part [& by virtue of the provons of the L. P. Act, 1925 (c)] certain ppty situate at — [the ppty demised by the sd. lease] is now vested (d) in the sd. B. [mtgee] for the term of — yrs [for all the residue of the [several] term[s] created by the sd lease[s] less the last — days throf [re-
spevely]] without impeachmt for waste from the — day of — to the 1st day of January 1926 for securg paymt by the sd A. [*or the borr*] to the sd B. [mtgee] on the day thrin mentd & since passed of the sum of £—— advanced by the sd B. [mtgee] to the sd A. [*or the borr*] with intt thron at the rate of £—— p.c. p.a. [And in the mtge now in recital were contd a provon for reducg the rate of intt on the sd sum of £—— to the rate of £—— p.c. p.a. as thrin mentd, & a power of sale & other powers & provons for further securg the repaymt of the sd sum of £—— & intt]. Mortgage
of free-
holds.
Varia-
tions for
lease-
holds.

(b) A policy of this nature is a contract of suretyship : *Re Denton*, [1904] 2 Ch. 178.

(c) The words in brackets should be added where the mortgage was created before the 1st of January, 1926. In the case of leaseholds mortgaged by demise before that date there is no necessity to notice the trust of the reversion and powers of attorney and appointing a new trustee usually inserted in such mortgages, since, under s. 89 of the L. P. Act, 1925, the mortgagee (including the persons deriving title under him : s. 205 (1) (xvii)) can, unless expressly excepted with the leave of the Court, convey the leasehold reversion when selling under his statutory or express power of sale ; but see *ante*, p. 3.

(d) If the mortgage was created after the 31st of December, 1925, and was effected by way of legal charge, say : “were charged by way of legal mtge in favour of the sd B. [mtgee],” and omit reference to the term and to waste.

Sub-
mortgage.

11. WHAS by a sub-mtge dated, &c., & made, &c., the sd mtge debt of £—— & the intt thron seed by the recited mtge & the ppty comprised in & assured thereby (subjt as to the sd mtged ppty to such right of redmon as the same were subjt to by virtue of the recited mtge) were resply assned & subdemised (e) [charged by way of legal mtge *omitting reference to term*] by the sd A. to the sd B. as to the ppty for the term of —— yrs without impeachmt of waste & as to the entirety of the sd premes by way of mtge for securing the paymt to the sd B. of the sum of £—— & intt.

Devolu-
tion of
right of
redemp-
tion.

12. WHAS the right of redmon of the sd [freehd, & leasehd] premes comprd in the recited mtge is now vested in the borr.

INTRODUCTORY.

Agree-
ment for
loan.

1. WHAS the mtgee has agrd with the borr to lend him the sum of £——, upon havg the repaymt throf with intt thron at the rate hrinar mentd, seed in mner hrinar appearg.

The same
by several
on joint
account.

2. WHAS the mtgees have agrd with the borr to lend him the sum of £—— out of moys belongg to them upon a jt acct (a), upon havg the repaymt throf, with intt, &c., *as in f. 1.*

Joint
account.

(e) For a sub-mortgage made before the 1st January, 1926, say : “assned & conveyed by the sd A. to the sd B. as to the mtged ppty in fee simple wch sd este was converted into a term of 3,000 yrs from the 1st day of January 1926 without impeachmt of waste by the provisions of the L. of P. Act, 1925.”

(a) A statement that the advance is made, or is intended to be made, on a joint account, or the mere fact without any such statement that the mortgage is made to two or more persons jointly and not in common is sufficient to make the right to the mortgage money survive : L. P. Act, 1925, s. 111 ; the statement in the text now usually supersedes the joint account clause (p. 28, f. 2), which was formerly inserted. A person dealing in good faith with a mortgagee, or if the mortgage has been discharged in whole or in part, or postponed, with a mortgagor is not concerned with any trust at any time affecting the mortgage money or the interest thereon, even if he has notice of the trust, and may assume that mortgagees are entitled on a joint account and that they had or have power to give good receipts and to release, postpone, or deal with the mortgaged property : L. P. Act, 1925, s. 113. The statement will not, however, affect the right of the mortgagees *inter se* if they are really entitled to the money as tenants in common : *Re Jackson*, 34 Ch. D. 732 ; *Steeds v. Steeds*, 22 Q. B. D. 537 ; and is effectual even if (according to the usual practice) the mortgage is not executed by the mortgagees : *Elph. Introd.*, 7th ed. 200.

Payment to one of two mortgagees who have advanced money on a joint account in the lifetime of the other discharges the land to the extent

3. WHAS the mtgees [or the sd A., B. & C., naming them] have agrd with the borr to lend him the sum of £—— in the sevl sums followg, that is to say, the sd A. £——, the sd B. £——, & the sd C. £——, upon havg the repaymt of the sd sevl sums of £——, £——, & £——, with intt, &c., as in f. 1.

The same by several on distinct accounts.

4. WHAS the mtgee has agrd with the borr to lend him the sum of £—— upon having the repaymt throf & of every other sum weh may be advanced psuant to the covt by the mtgee hrinar contd with intt, &c., continue as in f. 1.

Agreement to secure present and future advances (b).

5. WHAS the mtgees have agrd with the borr to lend him the sum of £—— & propose subjt to the sufficiency of the secy to lend him further sums (not exceeding with the sd sum of £—— the ppal sum of £——) out of moys, continue as in f. 2.

The same where the loan is by trustees (c).

6. WHAS upon an acct stated this day betn the borr & the mtgee there is owing to the mtgee from the borr the sum of £——, & it has been agrd that the repaymt throf, with intt at the rate hrinar mentd, shl be seed in mner hrinar appearg.

Agreement to secure sum due on account stated.

7. WHAS it has been agrd that the sd loan shl be continued & the intt to accrue upon the sd sum of £——, shl [at the option of the borr,] accumulate at compound intt in the mner & on the terms hrinar expressed.

For payment of compound interest.

8. WHAS the surety has agrd to join in this deed as surety for the borr in mner hrinar appearg.

That surety shall join

Surety independent

9. WHAS in the negotiation & preparon of this deed the borr

of the beneficial interest (if any) of the payee: *Powell v. Brodhurst*, [1901] 2 Ch. 160.

(b) This recital, being general in form, may be used in connection with any form of covenant for further advances. Where there is no such covenant say, "advanced to the borr by the mtgee"; and where the mortgage is to secure all sums for the time being owing to a trader for goods supplied say, "weh may become owing from the borr [or his successors in business] to the mtgee [or his assns]," and define "successors in business" as in f. 14, *post*, p. 75. Cf. the form of covenant, *post*, p. 33, f. 8.

(c) Before making a further advance trustees should see that the security is sufficient. The loan should only be made under the advice of an able practical surveyor or valuer employed independently of the owner of the property, and should not exceed in all two thirds of the value of the property as stated in the surveyor's report: T. Act, 1925, s. 8. The receipt for the further advance should be endorsed and be in the following form:—"Received from the within-mentd B & C the sum of £—— out of moys belonging to them on a joint acct."

dently
advised
(d).

Agree-
ment to
postpone
security.

State of
mortgage
debt (e).

State of
mortgage
debt
where
interest is
arrear (a).

State of
mortgage
debt
where
sale has
been
made (b).

Variation
where
there
have been
further
advances.

was advised by Messrs. — solers & the surety was advised by Messrs. — solers.

10. WHAS the sd — has at the reqt of the borr agrd to assign his sd mtge term [charge] & postpone his afsd security to the security hby effected & to take such substituted secy as is contd in a deed of even date hrwith & made btwn the borr & the mtgee & intended to be exctd immedly after this deed.

11. WHAS the sd, or, "within mentd," sum of £— remains owing to the mtgee on the secy of the recited, or, "within-written," or, "ppal" mtge, but all intt for the same has been pd up to the date of this deed, as the mtgee hby admits.

12. WHAS the sd, or, "within-mentd," sum of £— togr with the sum of £— for intt thron from the — day of — (makg the total sum of £—) remains owing to the mtgee, on the secy of the recited, or, "within-written," or, "ppal" mtge.

13. WHAS on a sale by the mtgee in the yr — of pt of the premes comprised in the recited, or, "within written," or, "ppal," mtge namely of the ppty specified in the schdle hto,

(d) A mortgage is not valid against the surety where the latter is acting under the undue influence of the mortgagor: *Berdoe v. Dawson*, 34 Beav. 603. As to the cases in which undue influence will be presumed, and as to the necessity for a surety to whom the mortgagor stands in a confidential relation to be advised independently, see the notes to *Huguenin v. Baseley*, 1 White & T. L. C., 8th ed. 259. The duty of the independent adviser is merely to point out the nature and consequences of the act proposed to be done: *Re Coomber*, [1911] 1 Ch. at p. 729.

(e) Where there have been further advances the recital will commence: — "WHAS the mtgee has since the date of the recited, or, 'within-written,' or, 'ppal' mtge advced to the borr, upon the secy of the same mtge, further sums mtg togr to the sum of £—: AND WHAS the sd, or, 'within-mentd,' sum of £—, the original advance, & the sd sum of £—, further advances, makg togr £—, remain owing," &c., continue as in text.

(a) See last note.

(b) A mortgagee liable to pay increment value duty or reversion duty in respect of any interest in land vested in him was allowed by the Fin. (1909-10) Act, 1910, s. 39 (4), to add the amount of duty and costs of payment to his security. Both these duties have been abolished by the Fin. Act, 1920, s. 57, and repayment of any duty paid could have been obtained within six months after the passing of the latter Act.

the sd, or, "within mentd," sum of £—— was reduced by the sum of £—— being the net proceeds arising from such sale after deducting the costs & expses throf leaving a sum of £—— wch sd sum of £—— now remains owing, etc., *continue as in f. 11.*

14. WHAS the total ppal moys seed by the recited or "within-written," or, "ppal," mtge did not at any time exceed the sum of £——.

Total principal money secured (c).

15. WHAS the mtgee has agrd to lend to the borr the further sum of £—— (d), upon having the repaymt throf, with intt at the rate hrinar mentd, seed in mner hrinar appearg.

Agreement for further advance.

16. WHAS psuant to the sd agrmt the borr has transferred into the name of the mtgee the stocks shares debenture stocks & debentures specified in the first pt of the first schdle hto & has deposited with him the script certificates (which pass by delivery & are payable to bearer & specified in the second pt of the sd schdle & the certificates of the shares specified in the second schdle hto togr with duly exected transfers throf enabling the mtgee to have his name registered as a shareholder in respt throf & to deal with the last mentd shares.

Title to shares, &c.

17. WHAS the sd, *transferee*, has [at the reqt of the borr (e)] agrd to pay to the mtgee the sd sum of £——, *the amt due for ppal & intt, if any, in arrear (f)*, upon having such transfer of the sd mtge debt of £—— & intt & the securities for the same as is hrinar contd.

Agreement for transfer.

18. WHAS the sd, *transferee*, has agrd with the borr to pay to the mtgee the sd sum of £—— & to lend to the borr the further sum of £—— (f), upon having the paymt of the sd ppal sums of £—— & £—— makg an aggregate ppal sum of £—— (g), with intt at the rate hrinar mentd seed

Agreement for transfer and further advance (ff).

(c) This recital should be inserted in reconveyances where (1) further advances are secured; (2) interest is accumulated; or (3) the mortgagee's costs are charged with interest: see Stamp Act, 1891, s. 5, Sched., tit. MORTGAGE (5).

(d) For several mortgagees or transferees lending on a joint account, add here:—"out of moys belongg to them on a jt acct."

(e) These words will be added where the mortgagor joins.

(f) See note (d).

(ff) For form of recital on transfer by trustees upon appointment of new trustees, see p. 243.

(g) If the security is to extend to future advances, insert here "with any further sums wch may be advanced psuant to the covenant

by a transfer of the sd mtge debt of £—— & intt & the securities for the same & orwise in mner hrinar appearg.

Agree-
ment
for
further
security.
Desire to
redeem.

19. WHAS upon the treaty for the sd mtge it was agrd that the sd sum of £—— & intt shd be further seed in mner hrinar appearg.

20. WHAS the borr is desirous of payg off the sd ppal sum of £—— (*h*), & of having the sd, *or*, “within-mentd,” mitged premes released & surrendered in mner hrinar appearg.

Desire for
recon-
veyance,
all mort-
gage
moneys
having
been paid
off.

21. WHAS all ppal moys & intt weh were at any time owing on the secy of the recited mtge [transfer & further chge] have been fully pd & satisfied as the mtgee hby acknowes, & the borr is desirous of having, &c., *as in last form*.

22. WHAS £—— pt (*i*) of the sd [aggregate] sum of £—— has been pd by the borr to the mtgee leavg the sum of £—— owg upon the secy of the recited mtgee [transfer & further charge] & the mtgee has agrd to execte such release & surrender of pt of the ppty comprised in the sd secy as is hrinar contd.

CONSIDERATION—RECEIPT (*a*).

Present
advance.

1. IN CONSON of the sum of £—— now pd to the by the sd, *transferee*,” hrinar contained. If there is no covenant, say “advanced to the borr by the sd, *transferee*.”

(*h*) If the mortgagor is a trustee, say “out of moys in his hands as tree of the sd settlemnt, *or*, ‘will,’ applicable for that ppose.”

(*i*) Where part of the property only is reconveyed, the property cannot be reconveyed by receipt, under s. 115 of the L. P. Act, 1925, see *post*, p. 253, note (*d*).

Mort-
gagor's
receipt;

(*a*) As to a receipt for consideration money contained in the body of the deed being a sufficient discharge, see L. P Act, 1925, s. 67. As to receipts by trustees, see T. Act, 1925, s. 14; *Re British Land Co. & Allen*, 44 Sol. J. 593. A solicitor cannot rely upon any statement in the mortgage deed as to the amount advanced by him to a client, but must prove it by independent evidence; *Lewes v. Morgan*, 5 Price, 42; *Bateman v. Hunt*, [1904] 2 K. B. 530. As in the case of conveyances on sale, so in the case of mortgages, it is open to the mortgagor acknowledging the receipt to show, as between himself and the mortgagee, that the money was not paid, or that a lesser sum than that acknowledged was in fact paid, and to claim redemption on that footing. Where it is part of the bargain deliberately entered into by the mortgagor and mortgagee, a premium will be allowed on redemption: *Potter v. Edwards*, 26 L. J. (Ch.) 468; or deductions made by the mortgagee from the amount of the loan actually advanced will not be credited to the mortgagor in taking the redemption account: *Mainland v. Unjohn*, 41 Ch. D. 126. But, as between the mortgagor and a transferee or sub-mortgagee without notice, the receipt operates as an estoppel equally effective whether the relationship of solicitor and client exists

borr by the mtgee (b), the rect whrof the borr hby acknowes.

2. IN CONSON of the sum of £—— now pd to the sd, *third party*, at the reqt of the borr, by the mtgee, the rect & paymt whrof, in mner afsd, is hby acknowledged.

3. IN CONSON of the sum of £—— so owing by the borr to the mtgee as afsd.

4. IN CONSON of the aggregate sum of £—— now pd to the borr by the mtgees [*or name them*] in mner followg, that is to say, the sum of £—— by the sd A., the sum of £—— by the sd B., & the sum of £—— by the sd C., the rect of weh sd sevl sums the borr hby acknowes.

5. IN CONSON of the sum of £—— now pd to the borr by the mtgee (the rect, &c.), & of the covt by the mtgee, hrinar contd, for advancg the further sum of £—— by the instalmts & on the condons hrinar mentd.

6. IN CONSON of all ppal moys & intt seed by the hrinbfe recited or “mentd” mtge [*transfer and further charge*] of &c. havg been fully pd & satisfied in mner afsd.

Sum paid by mort-
gagee to
third
party.
Ante-
cedent
debt.
Sums
paid by
several
on dis-
tinct
accounts.
Present
advance
and cove-
nant for
further
advance.
Mortgage
moneys
having
been paid
off.

COVENANTS FOR PAYMENT (a).

1. THE BORR hby covts with the mtgee to pay to the mtgee between the original mortgagor and his mortgagee or not, and even though the transferee or sub-mortgagee is aware of the existence of that relation-ship; *Powell v. Browne*, 97 L. T. 854; see also *Saunders v. Kent*, [1885] W. N. 147. As a general rule, therefore, a transferee or sub-mortgagee advancing his money without notice that the amount acknowledged to have been paid was not in fact paid, may safely rely upon the receipt clause as proof of the amount advanced at the time of the mortgage: see L. P. Act, 1925, ss. 68, 205 (1) (xxi); *Bickerton v. Walker*, 31 Ch. D. 151. A deed purporting to take effect as a transfer of a mortgage, unless the contrary is therein expressed, operates to vest in the transferee the right to demand and recover the amount of the principal unpaid at the date of the transfer and the interest then due and to become due, and also the benefit of all securities for the debt and the right to sue the mortgagor on all the covenants in the mortgage deed as well as the estate and interest of the mortgagee in the mortgaged property subject to the right of redemption then subsisting: L. P. Act, 1925, s. 114. It is apparently unnecessary to give the mortgagee notice of the transfer in order to be able to sue him on it. A transferee of a mortgage made by an infant for necessities is entitled to claim the full amount so advanced: *Gardner v. Wainfur*, 89 L. J. Ch. 98. As to the protection afforded by a receipt clause in a conveyance on sale against the vendor's lien, see Vol. I., p. 478, note (f).

(b) For trustees or others lending on a joint account, add here:—“out of moys belongg to them on a jt acct.”

(a) The covenant for payment of principal and interest should be framed

Frame of
covenant.

on the sd — day of — next, the sd sum of £—, the
so as to present a complete statement of the terms upon which the principal is lent, without reference to the proviso for redemption.

As to
mention-
ing the
represent-
atives or
assigns of
the
parties.

There is no necessity to mention the representatives or assigns of either party in the formal part of the covenant for payment. Where, however, the mortgage is intended to secure future advances to be made not only by the mortgagee or his representatives to the mortgagor or his representatives, but also by the assigns of the mortgagee to persons who, though trading as successors in business to the mortgagor, are not necessarily assigns of the mortgaged premises (e.g. by partners of a firm after change of membership to the representatives of a trader or other persons carrying on the business of the trader on their own account), it is important to insert in the substantive part of the covenant appropriate words showing, either by reference to the mortgagee's covenant to make future advances where such a covenant is inserted, or otherwise, who are the persons (other than the mortgagor and mortgagee and their respective representatives) by whom and to whom respectively advances to be included in the mortgagor's covenant for repayment may be made. See p. 33, f. 8; *Re Watts*, 22 Ch. D. 5. By the insertion of the appropriate proviso for redemption the security may be made co-extensive with the covenant so as to include all such advances.

Effect
where no
covenant.

In the absence of a covenant for payment the mortgagor becomes, on completion, a simple contract debtor of the mortgagee for the principal with interest: *Duke of Ancaster v. Mayer*, 1 Br. C. C. at p. 464; *Quarrel v. Beckford*, 1 Madd. at p. 278; *Yates v. Aston*, 4 Q. B. 182.

Remedy
on cove-
nant
barred by
statute.

The personal remedy on a covenant in a mortgage of land, as well as the remedy against the land, is barred by the lapse of twelve years, under R. P. Lim. Act, 1874, s. 8; *Sutton v. Sutton*, 22 Ch. D. 511; *Fearnside v. Flint*, *ib.*, 579; even if the land is held on trust for sale: *Kirkland v. Peatfield*, [1903] 1 K. B. 756; *Re Fox*, [1913] 2 Ch. 75; *Re Witham*, [1922] 2 Ch. 413. Where the mortgage does not comprise land the period is twenty years: Civil Procedure Act, 1833, ss. 3 & 5; and see Withers on Reversions, 169. But a payment which preserve the right of action against the person making it, preserve the right against all other persons bound by the specialty. Thus, where a testator was bound by a specialty, payment by a devisee for life preserve the right of action against the remainderman: *Roddam v. Morley*, 1 De G. & J. 1; payment by a specific devisee of estates subject to a mortgage by the testator securing a specialty debt, preserve the right of action against devisees of his estates not comprised in the mortgage: *Re Lacey*, [1907] 1 Ch. 330; and a payment by the principal debtor will preserve the right of action against the surety: *Re Powers*, 30 Ch. D. 291; *Lewin v. Wilson*, 11 App. Cas. 639; *Re Frisby*, 43 Ch. D. 106. Although the right of action on the covenant is barred by statute, the debt itself is not extinguished. Where, therefore, a mortgagor seeks to redeem, the statute is no bar to the mortgagee receiving full interest: *Dingle v. Coppen*, [1899] 1 Ch. 726; *Re Lloyd*, [1903] 1 Ch. 385; but the latter has no claim for interest if his title to the mortgaged property has become extinguished: *Re Hazeldine*, [1908] 1 Ch. 34. A mortgagee of an equitable reversion in personality can, on its falling into possession, recover the fund from the trustee though the mortgage debt is barred: *Re Stucley*, [1906] 1 Ch. 67. The personal remedy on a simple contract debt where the

ppal, with intt thron in the meantime (b) at the rate of — p.c. p.a. from the date of this deed.

2. AND FURTHER if the sd moys shl not be so pd, to pay to the mtgee intt at the rate afsd by eql half-yrly, or, " qtrly " paymts on the — day of —, &c., *specify days for paymt*, in every year on the *ppal* moys for the time being remaing due on this secy (d).

To pay interest after default (c).

3. THE BORR hby covts with the mtgee to pay to the mtgee on the sd — day of — next the sd sum of £—, *the ppal*, the intt thron up to that day having been already pd. And further if the sd moys shl not be so pd to pay to the mtgee intt in advance at the rate of £— p.c. p.a. by eql half-yrly paymts

Where interest is payable in advance.

money sought to be recovered is charged on land is barred after 6 years under the Limitation Act, 1623, s. 3, the period not being enlarged by the R. P. Lim. Act, 1874: *Barnes v. Glenton*, [1899] 1 Q. B. 385. As to keeping alive a mortgage debt by payments by an agent, see *Bradshaw v. Widdrington*, [1902] 2 Ch. 430.

A mortgagee who cannot or refuses to restore the mortgaged property is not entitled to sue the mortgagor on the covenant for payment in the mortgage deed: *Ellis v. Dixon*, [1924] 2 Ch. 451, *per* WARRINGTON, L.J., at p. 470, and on appeal [1925] A. C. 489, *per* LORD SUMNER, at p. 493.

(b) Where it is intended that interest be paid free of income tax, say "at such a rate as shall after the deduction of the standard rate of income tax for the time being in force be equal to a rate of £— p.c. p.a."

Payment of interest by agent.

No remedy on covenant where reconveyance impossible.

Interest free of income tax.

It is thought that a covenant in this form does not fall within r. 23 (2) of the Rules to All Schedules contained in the Income Tax Act, 1918, and is unobjectionable. See *per* Scrutton, J., in *Blount v. Blount*, [1916] 1 K. B. at p. 235; *Booth v. Booth*, [1922] 1 K. B. 66; and see the form of the order in *Burroughes v. Abbott*, [1922] 1 Ch. at p. 99; *Re Gretton's Indenture*, [1923] 1 Ch. 177; Distinguish *Re Peck's Settlement Trusts*, [1921] 2 Ch. 237; and see *per* LORD FINLAY, L.C., in *Brooke v. Price*, [1917] A. C. at p. 121.

Where the interest is to vary with the Bank rate, say "at the rate of £1 p.c. over the current Bank rate with a minimum rate of £— p.c. p.a."

(c) As to the rights of the mortgagee to interest after default in the absence of a covenant, see *Mellersh v. Brown*, 45 Ch. D. 225; *Re Roberts*, 14 Ch. D. 49.

(d) Where the interest exceeds 4 per cent., having regard to the case of *Ex p. Fewings*, 25 Ch. D. 338 (distinguishing *Popple v. Sylvester*, 22 Ch. D. 98), and other cases discussed in *Economic Life*, &c., *Society v. Usborne*, [1902] A. C. 147, it may be desirable to add, "or on any order or judgmt wch may be made or recovered hrunder." As to interest on a debt proved in bankruptcy, and carrying interest, see Bankruptcy Act, 1914, s. 66.

on the — day of — & the — day of — in every yr
on the ppal moys for the time being remaining due on this secy.

By two or
more
jointly
and
severally
(a).

4. THE SD, *covtors*, hby jtly & sevly covt with the mtgee
to pay to the mtgee, *continue as in ff. 1 & 2.*

By tenant
for life
to pay
interest
during
his life.
To pay
present
and
future
advances
(b).

5. THE SD, *tenant for life*, hby covts with the mtgee to pay
to the mtgee durg the life of the sd, *tenant for life*, intt at the
rate of £—— p.c. p.a. by, &c., *as in f. 2.*

6. THE BORR hby covts with the mtgee to pay to the
mtgee, &c., *continue as in f. 1.* And also on such — day
of — or — day of — as shl happen next after the same
resply shl be advanced (c) to pay to the mtgee every other
sum wch may be advanced (c) psuant to the covt by the
mtgee hrinar contd with intt thron in the meantime at the rate
afsd from the time of the same being advanced.

To pay
principal
and inte-
rest in

7. THE BORR hby covts with each of the mtgees [*or each*
of them, the sd, *mtgees*] separately to pay to him on the sd
— day of — next the sum advanced by him towards the
sd aggregate loan of £—— as afsd, with intt thron in the

(a) See also the forms of covenants by several in Vol. I, sub-tit. Covenants (Formal Parts). The precise form of the covenant seems immaterial provided each covenantor is made to covenant severally, and the shorter form in the text will suffice, having regard to R. S. C. 1883, Order 16, rules 4 and 6. This form is suitable for a covenant by principal and sureties. Judgment recovered against one of two joint contractors is a bar to an action against the other; and the rule applies where one is a married woman contracting in respect of her separate property: *Hoare v. Niblett*, [1891] 1 Q. B. 781.

(b) This covenant being general in form is applicable whether the covenant on the part of the mortgagee is confined to advances to be made by the mortgagee to the mortgagor (including, unless otherwise expressed, their respective legal personal representatives), or extends, as is sometimes the case, where the parties or either of them are traders, to the assigns of the former and the successors in business of the latter.

(c) Where the deed contains no express covenant to make further advances, as would usually be the case where trustees propose to make further advances or where the mortgage is to secure repayment of all sums for the time being owing to a trader for goods supplied, substitute for the reference to the covenant in the former case, "to the borr by the mtgees with intt, &c."; and in the latter case say "wch may become owing (except for intt) from the borr [*or his successors in business*] to the mtgee with intt, &c., from the time when the same shl become owing," and substitute the words "become owing" for the words "be advanced" in the first place where they occur. The expression "successors in business" should be defined as in f. 14, *post*, p. 75.

meantime at the rate of £—— p.c. p.a. from the date of this deed, AND FURTHER, *continue as inf. 2, saying* “on the ppal moys for the time being remaing due on this seey in respt of his sd advance.”

respect of distinct debts, & to pay interest after default.

8. THE BORR hby covts with the mtgee to transfer into the name of the mtgee on the sd —— day of —— next the sum of £—— 2½ p.c. Consold Stk, & in the meantime to pay to the mtgee sums of moy eql to the dividends on the sd sum of stk, on the days for paymt of such dividends, [or, & to pay to the mtgee on the sd —— day of —— intt on the sum of £——, being the psnt market value of the sd sum of stk at the rate of £—— p.c. p.a. from the date of these psnts], AND FURTHER, so long as the sd sum of stk or any pt throf shl remain untransferred to pay to the mtgee sums of moy eql to the dividends on the sd sum of stk, or on so much throf as shl for the time being remain untransferred on the days for paymt of such dividends, [or, to pay to the mtgee intt at the rate afsd by eql half-yrly paymts on the —— day of —— & the —— day of —— in every yr, on the sd sum of £——, or on such pt throf as shl not for the time being have been satisfied by a transfer of a proportionate pt of the sd sum of stk].

Covenants in a stock mortgage, with variations.

9. THE BORR hby covts with the mtgee to pay to the mtgee the sd sum of £——, *the ppal*, with intt thron in the meantime at the rate of £—— p.c. p.a., by the instalmts, at the times, & in mner followg, that is to say, the ppal sum of £—— by —— eql [half-yrly, or, “qtrly”] instalmts of £—— each, whrof the first is to be pd on the —— day of —— next, & a like instalmt on every subseqt —— day of —— [& —— day of ——] until the sd ppal sum of £—— shl be fully pd, & the intt on the sd sum of £——, or on so much throf as shl from time to time remain unpd, by half-yrly, or, “qtrly,” paymts on every —— day of ——, [& —— day of ——], along with the instalmts of the ppal, so that upon each such day the intt up to that day shl be pd, togr with the instalmt of ppal

To pay principal by instalments, and interest on unpaid principal (a).

(a) Where the mortgage money is to be repaid by instalments, but the mortgagee is to have the right to call in the whole sum on default in payment of any instalment (or on breach of any of the mortgagor's covenants), it is generally safer and more convenient to insert a covenant for payment and proviso for redemption, and other clauses in the ordinary form, and to qualify the whole by the proviso at p. 30, f. 4. For other special forms of covenant for payment by instalments see *post*, pp. 132, 136.

Payment by instalments.

On default in payment of any instalment unpaid principal to be immediately payable.

To pay principal and interest on demand (c).

then payable as aforesaid, [AND further, that if at any time any of the said instalments or interest, or any part thereof respectively, shall be in arrear & unpaid for the period of *thirty* days after the time hereinbefore appointed for the payment thereof, or if default shall be made in the observance or performance of any of the covenants on the part of the borrower herein contained (other than the covenant for payment of the said principal money & interest), then & in any such case the whole of the said principal money which shall for the time being remain unpaid shall forthwith become payable, & shall be paid with interest at the rate aforesaid by the borrower to the mortgagee on demand (b)].

10. THE BORROWER hereby covenants with the mortgagee to pay to the mortgagee [or any person authorised by him to demand the same] on demand [in writing (d) to be delivered or sent by post to the borrower or left upon the mortgaged premises] the said sum of £——, *the principal sum*, with interest thereon until payment at the rate of £—— p.c. p.a. from the date of this deed, & also every other principal sum which may be advanced (e) to the borrower by the mortgagee with interest thereon

Variation where events in which unpaid principal is to become due are inserted by reference.

(b) Upon the happening of any of the events mentioned upon the happening of which the principal remaining unpaid is to become due, the statutory power of sale arises: L. P. Act, 1925, s. 101 (1). It will be proper, nevertheless, where the above form of covenant is adopted, to insert an express power of sale framed as at p. 57, to arise immediately upon the execution of the mortgage or at a fixed date thereafter so as to obviate the necessity of proving to a purchaser that some one of the events mentioned in the text had in fact happened by reason of which the mortgage money had become due within the meaning of the section. It frequently happens that a power of sale is intended to be exercisable upon the happening of events other than those mentioned in the text. In that case it will be convenient to substitute for the concluding clause in the text, the following further covenant: "AND FURTHER, that if the express power of sale hereby conferred shall at any time hereafter become exercisable, then & in such case the whole," &c., *continue as in text*.

(c) Compare the form of covenant by a firm to pay balance on account current, *post*, p. 21. Non-payment on demand of a person representing himself to be the agent of the mortgagee, before the mortgagor has had an opportunity of enquiring into the truth of the alleged agency, does not constitute default in payment on demand: *Moore v. Shelley*, 8 App. Cas. 285.

(d) If the mortgagor knows that the mortgagee is claiming repayment a demand in writing may be dispensed with: *Worthington & Co. v. Abbott*, [1910] 1 Ch. 588.

(e) Where the mortgage is to secure repayment of all sums for the time being owing to a trader for goods supplied say "which may become owing from the borrower [or his successors in business] to the

until paymt at the date afsd from the time of the same being advanced. AND FURTHER, until such demand shl be made & complied with to pay in pt paymt of such intt to the mtgee intt at the rate afsd, *continue as at p. 17, f. 2.*

11. THE BORRS hby covt [& the ptners hby severally covt] with the mtgees that the borrs will on demand in writing to be delivered or sent by post to them [or their assns] at their Office at — or left upon the mtged premes pay to the mtgees (or to one of their cashiers for the time being expressly or impliedly authorised by them to receive the same) the balance weh on the acct current of the borrs [or of their successors in business] with the mtgees shl for the time being be owing in respt of bills, notes or drafts accepted pd or discounted or advances made to or for the accomodation of the borrs [or their successors in business] [and for intt commission & other usual bankers' charges] or orwise, togr with intt on the sd balance from the date of such demand being made or left until paymt at the rate of £—— p.c. p.a. [and further will give notice to the mtgees of any change in the firm of the borrs or their successors in business within one week after any such change shl have occurred] Provd that where any moy hby seed is or shl be also seed to the mtgees by any bill or other instrumt securing a higher rate of intt than the rate hby reserved nothing hrin contd shl affect the right of the mtgees to recover by virtue of any such bill of exchange or other instrumt such higher rate of intt or the difference between such higher rate & the rate weh shl have been pd or shl be payable hrunder.

By firm
to pay
balance
on ac-
count
current.

Proviso
keeping
alive
higher
rate of
interest
on bills,
&c. (f).

12. THE surety hby covts with the mtgee that if default shl at any time be made in paymt of the intt on the sd sum of

By surety
to pay
interest

mtgee with intt, &c., from the time when the same shl become owing"; and define successors in business" as in f. 14, p. 75.

(f) It is conceived that this provision would not render the mortgagees liable to the risk of the simple contract security created by subsequent bills of exchange, &c., merging in the security of the covenant; for the authorities show that merger would not take place unless the lower security was prior in date to the higher, nor even then if the latter was only a collateral security, nor unless the securities were for the same debt and in other respects the remedies were co-extensive, which would not be the case having regard to the different rates of interest, see 2 Dav. Prec., 4th ed., pt. 2, pp. 608—609; Fisher, 6th ed., 793; *Chetwynd v. Allen*, [1899] 1 Ch. 353, and *post*, p. 180, note (b), and 56 Sol. J. 593, 609.

As to
merger of
lower in
higher
security.

on default of mortgagor.

£—— or any pt throf psuant to the covt by the borrr hinbfe contd, then & in any & every such case the surety (a) will on demand (aa) [so long as any ppal moy remains due on this seey (b)] pay to the mtgee the intt weh shl be so in arrear & unpaid.

Cove-
nant by
tenant
for life as
surety for
payment
of inte-
rest and
charge
thereof
on his
life
interest.

13. THE sd, *tenant for life*, hby covts with the mtgee that the sd, *tenant for life*, will at all times durg his life, if the sd sum of £——, or any pt throf, shl so long remain owing on this seey, pay to the mtgee on demand the intt on the sd sum of £——, or on so much throf as shl for the time being remain unpd, in case of default being made in such paymt [psuant to the covt for paymt throf by the borrr hrinbfe contd] & that all intt to become payable upon or in respt of the sd sum of £——, or any pt throf during the life of the sd, *tenant for life*, shl be a charge upon & payable out of the income payable under the trusts of the recited will [settlemt] to the sd, *tenant for life*, durg his life, and the sd, *tenant for life*, hby chges the sd income with the paymt of the sd intt acedly.

HABENDUM.

Free-
holds.

1. TO HOLD UNTO the mtgee for the term (c) of 1,000 yrs (d) from the date hrof witht impeachmt of waste subjt (d) to the provo for redmon hrinar contd.

(a) As to the continuing liability of the surety's estate after the death of the surety, see Vol. I., p. 52; *Re Crace*, [1902] 1 Ch. 733; cf. *Lloyds v. Harper*, 16 Ch. D. 290.

(aa) No cause of action arises against the surety until a demand is made: *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.

(b) If the mortgagor becomes bankrupt so that the debt becomes irrecoverable, these words discharge the surety: *Re Moss*, [1905] 2 K. B. 307; but if they are omitted the surety remains liable for interest: *Re Fitz-George*, [1905] 1 K. B. 462.

(c) This term is a legal term commencing from the date fixed in the instrument creating it and not requiring any entry by the mortgagee: L. P. Act, 1925, s. 149. The same section abolished the old doctrine of *interesse termini*.

Variation
for second
mortgage
or where
there are
prior
charges.

(d) If the mortgage is subject to a prior mortgage say, "1001 yrs. &c. subjt to the recited mtge [of the —— day of ——] & the sum of £—— & intt thereby seed as afsd & subjt." If the prior mortgage has not previously been mentioned say, "1001 yrs. &c. subjt to a mtge dated &c., & made, &c., for securing

2. To HOLD UNTO the mtgee henceforth for all the [respective] residue[s] now unexpired of the sd [several] term[s] of yrs created by the recited lease[s] except the last 10 days throf or "of each such term" subjt to the provo for redmon hrinar contd.

Lease-holds.

3. To HOLD UNTO the mtgee, subjt to the provo for redmon hrinar contd.

Pure person-
alty.

4. To HOLD UNTO the mtgee, as to such pts of the sd premes as are of freehd tenure for the term of 1,000 yrs from the date hrof witht impeachmt of waste & as to such pts throf as are of leasehd tenure for the respive residues now unexpired of the sevl terms of years for which the same premes resply are held by the borr except the last 10 days of each such term & as to all the sd premes subjt to the provo for redmon hrinar contd.

Free-holds and lease-holds together.

5. To HOLD UNTO the transferee for the [respective] residue[s] now unexpired of the sd [several] term[s] for wch the same [respective premes] were demised (g) by the recited, or, "hrinbfe mentd," or, "within-written," or, "ppal" mtge subjt to such right of redmon as the same premes are now subjt to by virtue of the recited or hrinbfe mentd or within-written or ppal mtge [mtges & further charge] [mtges & further charges specified in the schdle hрто] on paymt to the transferee of the sd sum of £—— the ppal & the intt due & to become due for the same [if a new equity of redmon is created

For transfer of mortgages of free-holds and lease-holds (f).
Variations where new equity of redemption is created.

the sum of £—— & intt & subjt." For several incumbrances affecting the legal estate express the mortgage term to be one day longer than the term ranking immediately ahead of it, and say: "subjt to the prior charges and incumbees to wch the sd premes are hrinbfe expressed to be subjt, & subjt etc." If leases, restrictive covenants or charges are scheduled say, "subjt to the sevl leases, restrictive covts & charges specified in the schdle hрто so far as they affect the same or any pt throf resply & subjt."

(f) This form is intended for use in a transfer framed as under the old practice. As to transfers after 1926, see *post*, p. 238, and the form of transfer, *post*, p. 240.

(g) For a mortgage created before the 1st January, 1926, say: "for the [resptive] residue[s] now unexpired of the [several] term[s] now subsistg under the recited or hrinbfe mentd or within-written or ppal mtge and under the provons of the L. P. Act, 1925."

free from all right of redmon under or by virtue of the sd mtges [and further charges] but subjt to the provo for redmon hrinar contd.]

The same for personality.

For reconveyance of part of mortgaged property. Variation where whole debt is repaid (g).

6. To HOLD UNTO the transferee, subjt to such right, &c., or "free from, &c., but subjt," as in f. 5.

7. To THE INTENT that the term created by [subsistg under] the recited or hrinbfe mentd or within-written or ppal mtge may sink into & merge in the freehd [leasehd] reversion immedly expectant thron & that the sd premes may henceforth be held by the mtgee discharged from the sd sum of £—— & intt thron [& all moys now or at any time htofore owing on the secy of, & from all charges, claims, & demands whatsr, under or by virtue of the recited, or, "hrinbfe mentd," or, "within-written," or, "ppal," mtge, or, "mtges, transfer, & further charge," or "mtges & charges specified in the schdle hto "] (h).

PROVISOES FOR REDEMPTION (a).

Legal estate in freeholds or leaseholds.

1. PROVD ALWAYS, that if the borrr shl on the —— day of —— next *usually the first day for payment of intt* pay to the mtgee,

(g) See *ante*, p. 5.

(h) Where the mortgagee has notice of a second mortgage add "but subjt to the recited mtge of, &c., the second mtge, & to the ppal moys & intt now or henceforth to become due on the secy throf." Where the reconveyance is made by a second mortgagee, add "but subjt to the mtge of first mtge & the ppal moys & intt now or henceforth to become due on the secy throf."

As to form of proviso for redemption.

(a) It is better in ordinary cases to adhere to the strict form of proviso for redemption on payment of the mortgage money on a specified day, usually not more than six months from the date of the mortgage, to ensure that the mortgagee shall have the right of foreclosure. A charge by way of legal mortgage made in the form given in the Fifth Schedule of the L. P. Act, 1925, and reproduced, *post*, p. 84, contains no proviso for redemption at all, but the position of mortgagee under such a mortgage will be the same as under a mortgage by demise: L. P. Act, 1925, s. 87. A mortgagee cannot foreclose before the day appointed for redemption, though a covenant by the mortgagor is broken; in other words, he cannot foreclose until breach of one or other of the conditions upon breach of which, according to the terms of the proviso for redemption, his estate becomes absolute at law: *Williams v. Morgan*, [1906] 1 Ch. 804. The following forms of provisos (with the exception of f. 8), are framed upon the footing that the condition for redemption is payment of the mortgage money, in accordance

the sum of £——, *the ppal*, with intt thron in the meantime at the rate of £—— p.c. p.a., then & in such case the sd [sub-

with a covenant in that behalf contained in the mortgage deed, six months after date or upon demand, as the case may be. Where it is intended that the mortgage money shall not be called in until a later date, the safe and usual plan is to insert the necessary stipulations later in the deed qualifying the primary contract between the parties for payment six months after date. Where the alternative and less usual plan of fixing a later date for payment is adopted, care must be taken to adapt the proviso for redemption to the altered circumstances by adding as a separate condition for reconveyance a condition that the mortgagor shall, in the meantime, and until the date fixed for payment of the principal, pay interest thereon in the manner and at the rate agreed, and also observe and perform all the covenants on the part of the mortgagor to be observed and performed : see the provisos for redemption in *Edwards v. Martin*, 25 L. J. Ch. 284; *Burrowes v. Molloy*, 2 J. & Lat. 521. The above observations do not of course apply to the case of a mortgage of a reversionary interest where interest is accumulated and the right of foreclosure is not intended to become exercisable until after the death of the tenant for life ; see *Prec. XXIII.*, *post*, p. 127.

Section 5 of the Act provides that where the purposes of a term created or limited at any time, out of freehold or leasehold land, become satisfied the term shall merge in the reversion immediately expectant thereon and cease, whether or not such term becomes attendant upon the reversion by express declaration or by construction of law. Sub-section 3 of s. 115 prohibits a mortgagee except in the cases mentioned in s. 116 from keeping alive a paid off mortgage to the prejudice of any subsequent incumbrancer. As to the form of reconveyance either by statutory receipt or formal reconveyance, see *post*, p. 253, note (d). As to the duty of the mortgagee to reconvey on being paid off, see 32 Sol. J. 717 ; *Rourke v. Robinson*, [1911] 1 Ch. 480 ; *Webb v. Crosse*, [1912] 1 Ch. 323 ; *Graham v. Seal*, 88 L. J. Ch. 31 ; and *post*, p. 253, note (e).

Duty of mortgagee to reconvey.

By the L. P. Act, 1925, s. 96, the mortgagor, or any subsequent incumbrancer, is entitled on paying off a mortgage to require the mortgagee, including the registered proprietor of a charge on registered land, L. P. Act, 1925, s. 205 (1) (xvi) (unless he is or has been in possession) to transfer the debt and security to any third person instead of reconveying, notwithstanding any stipulation to the contrary. Notwithstanding these sections a mortgagee having notice of a subsequent mortgage is not safe in transferring without the consent of the subsequent incumbrancer : *Re Magneta Time Co.*, 84 L. J. Ch. 814. Nor do the sections apply to the case of a tenant for life who has failed to keep down the interest, and has obtained the usual order permitting him to redeem : *Alderson v. Elgey*, 26 Ch. D. 567. As to the previous law, see 2 Dav., *Prec.* 4th ed., pt. 2, p. 280.

Power of mortgagor to require transfer.

As to notice prior to paying off a mortgage, see *NOTICES*, *post*, p. 324.

The presumption is that limitations in the proviso for redemption, different from the previous limitations of the property, are not intended to affect the rights of the parties further than is necessary for the security of the mortgage money : see *Heather v. O'Neil*, 2 De G. & J. 399 ; *Plomley v. Felton*, 14 App. Cas. 61 ; *Re Byron*, [1891] 3 Ch. 474. Where, therefore, it is intended to affect the title of the mortgagors, an express recital to that effect should be inserted.

term[s] hby granted shl absolutely cease & determine & become merged in the reversion[s] immedly exptant thron [or say after mention of rate of intt the mtgee shl at any time thrar at the request & cost of the borrr surrender the premes hrinbfe demised to the borrr (b)].

Person-
alty and
equitable
interests
in free-
holds and
lease-
holds.

In mort-
gage to
secure
present
and
future
advances.

2. PROVD ALWAYS, that if, as in f. 1, the premes hrinbfe assured shl at the request & cost of the borrr be duly reassured (c).

3. PROVD ALWAYS, that if the borrr shl on the — day of — next, pay to the mtgee the sum of £—, the ppal, with intt thron in the meantime at the rate of £— p.c. p.a., & shl on such — day of — or — day of — as shl happen next after the same resply shl be advanced, pay to the mtgee every other sum wch may be advanced (d), psuant to the covt by the mtgee hrinbfe contd with intt thron as afsd, then & in such case the mtgee, &c., continue as in f. 1, or f. 2, or as the case may be.

In mort-
gage of
shares
and de-
bentures
(c).

4. PROVD ALWAYS, that if the borrr shl on the — day of — next or “on such demand as is hrinbfe mentd or witht

(b) Section 5 of the L. P. Act, 1925, provides for the cesser of a term when the purposes for which it was created have become satisfied and s. 115 (3) prohibits a mortgagee from keeping a mortgage term alive after the debt has been paid off. Section 116 confirms the law enacted in the two previously mentioned sections, but allows a person having a limited interest only in the equity of redemption to keep the security alive by taking a transfer. In view of these provisions and the form of reconveyance by statutory receipt, allowed by s. 115, as to which see *post*, p. 253, note (d), a formal surrender will be unnecessary except in cases where a part only of the mortgaged property is released to the mortgagor.

Variation
for prior
charges.

(c) If there are prior charges, add, “subjt to the sd prior mtge of the — day of — if subsistg,” or, “subjt to the sd prior chges & incumbces hrinbfe mentd or referred to, or such of them as shl for the time being be subsistg.”

(d) Where there is no covenant to make further advances say, “to the borrr by the mtgee”; unless the mortgage is to secure repayment of all sums for the time being owing to a trader for goods supplied, in which case say, “wch may become owing (except for intt) from the borrr [or his successors in business] to the mtgee with intt,” &c., and substitute the words “become owing” for the words “be advanced” in the first place where they occur. See the expression “successors in business” defined, *post*, p. 75, f. 14; and see *post*, p. 18, note (c).

(e) The shares in the first schedule were transferred to and registered in the mortgagee’s name. The certificates and transfers in blank of the shares specified in the second schedule were deposited with the mortgagee, and a power to deal with them was given to him: see *post*, p. 195.

any such demand," pay to the mtgee the ppal sum of £—— with intt thron in the meantime at the rate of £—— p.c. p.a., or "and shl pay to him intt thron psuant to the covt in that behalf hrin contd," then the mtgee shl at any time thrafter at the reqt and cost of the borr retransfer to the borr the shares specified in the first schdle hto and such (if any) of the shares specified in the second schdle hto as shl have been transferred into the name of the mtgee, & also the debentures & debenture stock (if any) wch shl have been registered in his name in respt of the sd scrip certificates & deliver up to the borr, such of the sd transfers in blank as shl not have been completed & the certificates relating to the shares specified in the schdles hto & the sd bearer bonds, & also such of the scrip certificates as shl not have been exchanged for debentures or debenture stock.

5. PROVD ALWAYS, that if the borr shl, on the —— day of —— next, transfer into the name of the mtgee the sum of £—— $2\frac{1}{2}$ p.c. Consold Stk, & shl in the meantime pay to him sums of moy eql to the dividends on the sd sum of £—— Stk on the days for paymt of such dividends [or, "& shl also pay to him on the sd —— day of —— next, intt on the sum of £—— in the meantime at the rate of £—— p.c. p.a."], then & in such case the mtgee, &c., *continue as in f. 2 or as the case may be.*

In stock mortgage (a).

6. PROVD ALWAYS, that if the borr shl pay to the mtgee the sum of £—— *the ppal*, togr with intt thron or on the unpaid pt throf for the time being, in the meantime, by the instalmts, at the times, at the rate, & in mner hrin mentd, psuant to the covt in that behalf hrinbfe contd, then, & in such case the mtgee, &c., *continue as in f. 2 or as the case may be.*

Where covenant for payment of principal is for payment by instalments (b).

7. PROVD ALWAYS, that if the borr shl on such demand as is hrin mentioned or witht demand pay to the mtgee the ppal sum of £——, and shl pay to him intt thron psuant to the covt in that behalf hrinbfe contd, then the mtgee, &c., *continue as in f. 1 or as the case may be.*

Where principal is to be paid on demand.

8. PROVD ALWAYS, that if the borr shl on the —— day of —— next pay to the mtgees, or "Z. & Co," the sum of £——, &c., then the mtgees, or "Z. & Co," shall at any time thrafter, &c., *continue as in f. 1 or 2, or as the case may be.*

Mortgage to a firm.

(a) A mortgage to secure a specified sum of 3 p. c. stock made before the 27th March, 1888, may be redeemed by transfer of the same sum of $2\frac{1}{2}$ p.c. consolidated stock : National Debt Conversion Act, 1888, s. 21, but see *Re Hall*, [1903] 1 Ir. R. 475.

(b) See *ante*, p. 24, note (a).

In mort-
gage to
bankers
to secure
account
current.

9. **PROVD ALWAYS**, that if the borrr shl on such demand, as hrin mentioned or witht any demand being made, pay to the mtgees, or to one of the cashiers at the sd Bank, expressly or impliedly authorised to receive the same, the balce weh shl for the time being be owing as hrinbfe mentd, psuant to the covt hrin contd, then the mtgees shl at any time thrafter, &c., *continue as in f. 1 or 2, or as the case may be.*

Short
form to
follow
haben-
dum.

10. Subjt to redmon on paymt on the — day of — next to the mtgee of the sum of £—— & intt psuant to the covt of the borrr in that behalf hrinbfe contd.

TRUSTEE CLAUSES.

Charge of
interest
after de-
fault (a).

1. **THE borrs as trees**, in further exercise of the power, &c., or “execution of the trusts,” &c., hby charge the mtged ppty with paymt to the mtgee of intt at the rate afsd on the — day of — & — day of — in every yr on the ppal moys for the time being due on this secy.

Joint
account
clause
(b).

2. It is hby declared by the mtgees, or, “transferees,” that the sd sum of £—— so pd by them as afsd was (bb) moy belongg to them on a jt acct.

Clause ne-
gating
personal
liability
(c).

3. **THE sum of £——** advanced on the secy of this deed shl not nor shl any intt thron or any other moy for the time being

(a) This clause should be inserted in mortgages by trustees and in some other exceptional cases where no covenant for payment is contained in the deed, for the purpose of showing on what days interest is to be paid; although in the absence of express provision the principal already charged carries interest from the date fixed for redemption: *Lippard v. Ricketts*, L. R. 14 Eq. 291; *Re Drax*, [1903] 1 Ch. 781; *Re MacDermott*, [1912] 1 Ir. R. 166.

(b) See *ante*, p. 10, note (a)

Varia-
tion for
further
advances.

(bb) For further advances, add here: “and that any further sum or sums weh may hrafter be advanced or pd by them [or the survors of them] on the secy of this deed will be made by them out of.”

(c) In mortgages by trustees and others containing no covenant for payment, it should be made to appear, if so intended, that the security is given in satisfaction of and not as collateral to the contract for repayment implied by the advance: see *Ancaster v. Mayer*, 1 Br. C. C. at p. 464; *Yates v. Aston*, 4 Q. B. 182, and cases collected, 5 Bythewood, 3rd ed. 100, 363.

The clause in the text, if inserted in a deed containing an express unqualified covenant for payment by the persons to be protected from personal

due on this seey constitute a debt due from or be recoverable against the borrs or either or any of them, their or either or any of their exs, or ads, psonally.

CAPITAL AND INTEREST CLAUSES (d).

1. If the borr shl on every (e) day on weh intt is hby made payable or within *fourteen* days thrafter pay to the mtgee intt on the ppal moys for the time being owing on this seey at the [a] rate of £—— p.c. p.a. *the reduced rate* [one p.c. less than the rate afsd] & if the power of sale applicable hto shl not have become exercisable (g) then the mtgee will accept intt at such reduced rate for the half [quarter of a] year for weh such intt shl be pd to him or them within such fourteen days as afsd.

Provision for reduction of interest on punctual payment (f).

2. If the borr shl on every half-yrly [qtrly] day on weh intt is hby made payable until the —— day of ——, or within

Provision for continuance of loan for a term certain (h).

liability, will be repugnant to that covenant and therefore void: *Walling v. Lewis*, [1911] 1 Ch. 414; *Re Tewkesbury Gas Co.*, [1911] 2 Ch. 279, affirmed [1912] 1 Ch. 1; though where the covenant itself is qualified, different considerations apply: *Muir v. City of Glasgow Bank*, 4 App. Cas. at p. 355; *Re Robinson*, [1912] 1 Ch. 717.

Compare the provision in Co. Litt. 146a rebutting the presumption of personal liability arising from the grant of an annuity charged on land.

(d) These clauses consist for the most part of provisions qualifying the primary contract between the parties, and with the exception of ff. 3, 6, and 7, may, if thought desirable, be expressed in the form of covenants on the part of the mortgagee.

(e) According to the form in the text, one omission to pay interest within 14 days puts an end to the right of reduction. If it is intended that the omission should stop the right for the current quarter or half-year only substitute "any" for "every."

(f) This provision ceases on the mortgagee entering into possession: *Union Bank of London v. Ingram*, 16 Ch. D. 53; *Cockburn v. Edwards*, 18 Ch. D. 449; *Bright v. Campbell*, 41 Ch. D. 388. "Punctual" means on the day: *Leeds, &c., v. Broadbent*, [1898] 1 Ch. 343; *MacLaine v. Gatty*, [1921] 1 A. C. 376.

(g) Where there is a prior incumbrance and this or any other provision conditional upon the power of sale not having become exercisable is inserted, there should also be inserted as one of the events in which the power of sale is to become exercisable, that of the prior incumbrancer taking any step to enforce his security.

(h) Trustees may now under s. 10 (1) of the T. Act, 1925, lend money on a mortgage containing a provision for the loan to remain outstanding for not more than seven years from the date of the mortgage. The provision must be subject to the interest being paid not more than thirty days after the dates fixed for payment by the mortgage, and also to the mortgagor

fourteen days after each of such days resp'y (i), pay to the mtgee intt for the ppal moys for the time being owing on this secy at the rate afsd [or, if there is a provo for reduction of intt on punctual paymt "at the rate of, the reduced rate, p.c. p.a."], & if the power of sale applicable hto (which notwithstanding this present provision and without prejudice thereto shall be deemed to arise on the — day of — date of redemption (k)) shl not have become exercisable (l), then the mtgee shl not bfe the sd — day of — call in the sd sum of £— (a) or any pt throf.

Mort-
gagor not
to pay off
for term
certain
(c).

Provision
for pay-
ment by
instal-
ments.

3. THE borr shl not be entitled to pay off the sd sum of £— (b), or any pt throf, bfe the — day of —, unless the mtgee shl go into posson or appt a receiver of the mtge premes, or take any other step to enforce this secy.

4. IF the borr shl pay to the mtgee the sd ppal sum of £— with intt thron at the rate afsd (d) from the date of this deed by the instalmts at the times and in mner hrinar mentd that is to say (e) the sd ppal sum of £— by — equal [half] yrly

having committed no breach of any covenant in the mortgage for the maintenance and protection of the mortgaged property. The trustees can only exercise this power with the consent of any person whose consent is required to a change of investment: s. 10 (5). The power applies to all trusts whenever created, unless the trust instrument contains a direction to the contrary: T. Act, 1925, s. 69 (2).

(i) If the interest is not paid punctually, the mortgagee will not by receiving it after it has become due waive his right to call in the principal before the end of the term: *Keene v. Biscoe*, 8 Ch. D. 201; but the receipt of interest after the breach of other covenants may amount to waiver: *Seal v. Gimson*, 110 L. T. 583. If no interest is paid, time begins to run under the Statute of Limitations as to both principal and interest from the 14 days when the first instalment of interest becomes due: *Reeves v. Butcher*, [1891] 2 Q. B. 509.

(k) See *post*, p. 53.

(l) See *ante*, p. 29, note (g).

(a) Where appropriate, add:—"or any further ppal sum or sums wch may be advanced psuant to the covt by the mtgee hrinar contd," or as the case may be. See *ante*, p. 26, note (d).

(b) See preceding note.

(c) The term must not be unreasonably long. Seven years is the longest term in a reported case: *Morgan v. Jeffreys*, [1910] 1 Ch. 620; *Fairclough v. Swan Brewery Co.*, [1912] A. C. 565.

(d) Where interest is reducible on punctual payment, say "at the rate of, the higher rate, reducible to, the lower rate, on paymt in manner hrinbfe provd."

(e) Where the payment is to be made by equal yearly instalments com-

paymts of £ — each the first paymt to be made on the — day of — next & a subsequent paymt on every subsequent — day of — & — day of — & the intt on the ppal sum for the time being unpaid by [half-] yearly paymts on every — day of — [& every — day of —] whrof the first paymt is to be made on the — day of — next or shl make each such paymt of ppal & intt within fourteen days after the day hby apptd for the paymt throf resply & if the power of sale applicable hto (which notwithstanding this present provision and without prejudice thereto shall be deemed to arise on the — day of — *date of redemption (ee)*) shl not have become exercisable (*f*) then the mtgee shall accept paymt of the sd ppal sum & the intt thron by the instalmts at the times & in mner afsd.

5. THE borr may at any time or times or “on any day hby appointed for paymt of intt” upon giving at least one calendar month’s notice in writing to the mtgee or his solor of his intention so to do, pay off all or any pt of the ppal moys for the time being owing on this secy so that not less than £ — be so pd off at any one time, & that upon any paymt of ppal the intt on the whole ppal sum for the time being owing be fully pd, & that such partial paymt by anticipon shl not interfere with the paymt in regular course of the instalmts of ppal subsequently payable psuant to the provon in that behalf hrinbfe contd, but shl only have the effect of accelerating the ultimate paymt of the moys remaining owing on this secy.

Power to anticipate instalments.

6. IF & so often as any intt due under this secy shl be in arrear for fourteen days after the day apptd for paymt throf,

Provision for accumulation of interest

prising both principal and interest, continue “by — equal yearly instalmts of £ — each, the first instalmt to be pd on the — day of — next & a subsequent instalmt on every subsequent — day of — or within fourteen days after each such day, & if the power of sale applicable hto shl not have become exercisable then the mtgee shl apply each such instalmt in paymt of the intt for the time being due on this secy & subjt thereto in reduction of the sd ppal moys & shl accept paymt of the sd ppal sum of £ — & the intt thron by the instalmts at the times & in mner afsd.”

(ee) See *post*, p. 53.

(f) See *ante*, p. 19, note (a).

in arrear
at com-
pound
interest.
Variation
where
accumu-
lated
interest is
to be capi-
talised
(g).

such intt (h) less income tax thereon at the then current rate shl be treated in account as added to [treated as an accretion to] the ppal moys hby seed as from the day on wch the same intt is hrinbfe covtd to be pd & shl thenceforth bear intt at the rate afsd wch shl be pd by the borrh to the mtgee subjt to this provon as to accumulation [accretion] at the rate & on the days afsd, [& this seey shl extend to such capitalised intt, wch with the intt thron shl be charged upon all the mtged premes, & all powers available under or by virtue of this deed or any statute or orwise for securg or enforeg paymt of the sd ppal sum of £—— & the intt thron shl extend to such capitalised intt as afsd & the intt thron,] but witht prejudice to the rt of the mtgee at any time or times to enforce paymt of any accumulated [capitalised] intt as intt in arrear under any covt hrin contd PROV'D ALWAYS, that on any day hrinbfe apptd for paymt of intt, the borrh may pay to the mtgee, in addition to the intt then due upon the ppal monys for the time being owing on this sey the whole of such accumulated intt, [so much of the sd ppal moys as shl for the time being represent capitalised intt].

Proviso
in mort-
gage of
rever-
sion that
principal
shall not

7. PROV'D ALWAYS, that durg the life of the sd B. [unless & until some prior mtge shl be called in or enforced by sale or foreclosure] the sd ppal sum of £—— hby seed shl not nor shl any pt throf be called in & the intt accruing upon the sd

(g) It is not illegal to reserve compound interest: *Clarkson v. Henderson*, 14 Ch. D. 348; nor if so desired to treat interest in arrear as an accretion to capital. But it is open to doubt whether a provision would be upheld for adding to capital as a further advance in each year a sum equal to the full amount of interest thereon for that year without any deduction on account of income tax. A mortgagee in possession is not entitled to charge compound interest, unless he can show that, after crediting the rents received in each half-year, interest was in arrear on the day named in the proviso: *Wrigley v. Gill*, [1906] 1 Ch. 165.

(h) The mere covenant to pay interest with rests at stated periods does not of itself capitalise the interest. The word "capitalisation" has a different meaning commercially to that which it bears in law. In commerce any arrangement by which interest is itself made to bear interest is regarded as capitalisation, but in law it is always a question of construction whether the interest is intended to be added to the capital for all purposes or is only itself to become an interest bearing fund. See *Re Morris*, [1922] 1 Ch. 126; where the danger of always treating interest added to capital as capital is pointed out by YOUNGER, L.J., at p. 137, though the chief danger existing at the date of that decision, *i.e.* that of capitalised interest being treated as a further advance and postponed to mesne incumbrancers is removed by s. 94 of the L. P. Act, 1925, as to which see *post*, p. 33, note (d). If it

sum of £—— [or orwise acerug under this seey] during the life of the sd B. shall if not paid within seven days after the date appointed for payment throf be forborne and in that case payment thereof shall not be required or made until the death of the sd B. [or until one of the prior mtges shall be enforced as afsd]: And it is further expressly agreed and declared that all intt which shall be forborne under or by virtue of the provon lastly hinbfe cont shall thenceforth bear intt to be paid by the borr to the mtgee subjt to this provon for postponemt at the rate and on the date hrinbfe appointed for payment throf.

be called in, and interest shall accumulate, during life of tenant for life (a).

8. THE mtgee hby covts with the borr that the mtgee [or his assns (b)] will from time to time unless & until the power of sale applicable hto shl have become exercisable advance to the borr [or his successors in business (b)] such further sum

Covenant by mortgagee to make further advances (d).

is desired that the interest be capitalised in the legal sense the words in brackets should be added.

(a) See 45 Sol. J. 404, and *Re Craven*, [1907] 2 Ch. 448; *Re Morris*, [1922] 1 Ch. 126.

(b) See *ante*, p. 15, note (a).

(d) This covenant ought not to be entered into by trustees. Specific performance of it cannot be obtained, and, on a breach, the covenantee is left to his remedy in damages: *Western Wagon, &c., Co. v. West*, [1892] 1 Ch. 271; *South African, &c. v. Wallington*, [1898] A. C. 309: see also *Re Smelting Corporation*, [1915] 1 Ch. 472. Specific performance of a contract to take debentures may, however, be obtained now under Companies C. Act, 1908, s. 105.

A mortgagee can make further advances to rank in priority to subsequent mortgages whether legal or equitable (a) if it be so arranged with the subsequent mortgagee, or (b) if he had no notice of the subsequent mortgage at the time of making the further advance, or (c) if the prior mortgage imposes on him the liability to make further advances, in which last-mentioned case notice of a subsequent mortgage is immaterial: L. P. Act, 1925, s. 94 (1). The sub-section applies whether or not the prior mortgage was expressly made for securing further advances. Where the prior mortgage is made expressly for securing a current account or other further advances the prior mortgagee is not deemed to have notice of a subsequent mortgage by reason only of its registration as a land charge or in a local deeds registry if it were not so registered at the date of the original advance, or when the last search, if any, was made by the prior mortgagee: s. 94 (2). The section does not apply to charges registered under the Land Registration Act, 1925, or any of the enactments repealed thereby, but does apply to all other mortgages of land whether made before or after the 1st of January, 1926: s. 94 (4). Any priority acquired by tacking before that date is not to be affected: s. 94 sub-s. (3).

Effect of second mortgage on further advances by first mortgagee.

Where the mortgage contains no covenant to make further advances a
K.E.—VOL. II.

or sums as he [or they] may require not exceeding (with the sd sum of £—— now advanced) the sum of £—— by monthly instalmts of £—— each, such instalmts to be payable on the —— day of each calendar month & the first instalmt to be pd on the —— day of —— next [or, “by the instalmts at the times in mner & to the extent provided in the schdle hto”] [PROVD that no advances are to be made under this covt after the death of the mtgee (e). PROVD ALWAYS that this secy shl extend to all sums wch may be advanced by the mtgee [or his assns (f)] to or on acct of the borr [or his successors in business (f)] although the obligation to make or continue the sd advances shl have ceased or never existed.]

SURETY CLAUSES.

Declara-
tion that
sums ad-
vanced
by differ-
ent mort-
gagees
are to be
rateably
secured.

1. THE sd sums of £—— & £——, & the intt thron resply shl have no preferce or priority the one over the other, but shl be payable rateably out of any moys wch shl be received, recovered, or realised by the mtgees, or any of them, under or by virtue of this deed, whether on a sale of the mtged premes or by action on any of the covts hrinbfe contd or orwise.

As to
primary
liability
between
principal
and
surety
where
property

2. As betn the borr on the one hand & the surety & the mtged premes on the other hand, the borr shl be primarily liable for the paymt of the moys hby seed, but this provon shl not affect the mtgee, or in anywise preclude him, from enforeg or havg recourse to all or any remedies or means for recoverg paymt throf wch may be available under or orwise at

mortgagee cannot safely make them after notice of a subsequent incumbrance, unless the subsequent incumbrancer has agreed in the most express terms that such advances may be made : (*Hopkinson v. Rolt*, 9 H. L. C. 514 ; *Daun v. City of London Brewery Co.*, L. R. 8 Eq. 155 ; *Menzies v. Lightfoot*, L. R. 11 Eq. 459 ; *Bradford Banking Co. v. Briggs & Co.*, 12 App. Cas. 29 ; and see *Deeley v. Lloyds Bank*, [1912] A. C. 756.

(e) The words in this bracket must be inserted where it is not intended that the mortgagee's representatives should be bound to make the advances.

(f) See *ante*, p. 15, note (a).

such times & in such order & mner as he or they shl think fit.

3. As betn the borr & the mtged premes on the one hand & the surety on the other hand, the borr & the mtged premes shl be primarily liable, *continue as in preceding clause.*

4. ALTHOUGH as betn the surety & the borr, the surety is only a surety for the borr, yet as betn the surety & the mtgee, the surety shl be considered as a ppal debtor for all the ppal moys & intt hby seed, so that the surety shl not be released by time being given to the borr, or by any other varion in the provons of this deed, or any other act, omission, matter, or thing whatsr whby the surety as a surety only wd have been so released.

5. THE sd premes hrinbfe assured by the surety, although mtged by him as surety only for the borr, shl not be released from liability in respt of the ppal moys & intt hby seed by time being given to the borr, or by any other varion in the provons of this deed.

6. THE surety shl not be liable under the covt or covts hrin contd to pay a larger sum in the whole in respt of ppal moy & intt taken togr than the sum of £—— with intt on such sum at the rate afsd from the time of demand for paymt being made on the surety, his exs, or ads, until paymt.

7. THAT if the borr, *tenant for life*, shl die prior to redmon of the mtged premes the surety shl within one week after the death of the borr, *tenant for life*, inform the mtgee throf,

belongs to surety(g).

The same where property belongs to mortgagor.

Surety to be liable as a principal debtor (h).

As to property mortgaged by surety where no personal covenant on his part (h).

Provision limiting surety's liability (b).

Covenant to produce evidence of

(g) In all cases where the surety may be acting under the undue influence of the mortgagor, the mortgagee should see that the surety is advised by an independent solicitor: see *ante*, p. 12, note (d); and a recital to that effect should be inserted. As to the rights of a surety, see Vol. I., p. 52.

(h) The rule which this clause is intended to exclude is that any alteration of the contract between the mortgagee and the principal debtor behind the back of the surety not only discharges the surety from all personal liability if he has pledged his personal credit by bond or covenant: *Bolton v. Buckenham*, [1891] 1 Q. B. 278; but also, if he has by the same contract pledged his goods or charged his lands as security for the same debt, releases the goods or lands so pledged or charged by the surety: *Bolton v. Salmon*, [1891] 2 Ch. 48. An assignment of a mortgage debt has not the effect of releasing the surety: *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.

(b) This clause will usually be inserted immediately after the surety's covenant to pay the principal.

Alteration of contract releasing surety.

mort-
gagor
being
alive (c).

& shl within thirty days after such death furnish to him satisfactory evidence (d) as to the cause, date, & place of such death, & of the date & place of burial, & shl in the meantime on the — day of — next & on every subsequent — day of — & — day of — until the death of the borrr, *tenant for life*, or redmon of the mtged premes (whichever shl first happen) furnish satisfactory evidence to the mtgee of the borrr, *tenant for life*, being alive & of his place of residence on such day, AND FURTHER that the costs of furnishing the sd evidence shl be borne by the borrr until foreclosure or sale of the mtged premes & afterwards by the mtgee.

Provi-
sion
where
surety
liable
for part
only of a
debt (e).

8. Ntwhstdg & witht prjdee to the covt hrinbfe contd for paymt of the sd ppal sum & intt thron at the rate afsd the sd covt by the sd *surety* shl be deemed to be in respect of all the ppal moys & intt thereby seed & not of a part only & accordgly

- (i) any paymt made by the sd *surety* shl be received & applied by the mtgee in reduction of the whole amnt due in respect of ppal & intt in such mnrr & in such propous as the mtgee shl think fit
- (ii) any paymt made by the borrr whether by way of dividnd in bkey or orwise & the full benefit of the secy hby

(c) In mortgages of life interests and policies—especially where the mortgagor is not a man of position—it is important that someone should guarantee production of evidence of existence and proof of death, otherwise he may disappear, and for years the trustees of the life interest may refuse to pay the income, and the insurance company may insist on the premiums being paid. The mortgagee of a life interest may be ordered on the application of the remainderman to produce the mortgagor under the Cestui Que Vie Act, 1707; see the cases collected, Seton, 7th ed., 1714. Where a reversionary life interest is mortgaged, this form should extend to the deaths, &c., of the tenants for life both in possession and reversion.

(d) I.e. such as can be reasonably obtained: *Braunstein v. Accidental, &c., Co.*, 1 B. & S. 782. consider *Doyle v. Glasgow, &c., Co.*, 50 L. T. 323.

(e) The mortgagor will covenant to pay the whole debt in the usual manner, whilst the surety will separately covenant to pay the portion which he guarantees. A surety who has covenanted to pay less than the total debt and interest cannot insist on a payment made by him being appropriated by the mortgagee to that part of the debt which he has guaranteed: *Kirby v. Duke of Marlborough*, 2 M. & S. 18; *Re Sherry*, 25 Ch. D. 692: the provisions of subclause (iii) in the text are therefore directory only. A surety who gives a continuing guarantee limited in amount to secure a floating balance cannot deduct a rateable proportion of the dividend paid in the bankruptcy of the mortgagor if the mortgage deed shows it to be the intention that he should guarantee a limited amount of the whole debt: *Ellis v. Emmanuel*, 1 Ex. D. 157.

- created shl be recvd & held by the mtgee on acct of all moys outstdg and pply chged on the sd premes
- (iii) the mtgee shl not be obliged to receive any sum in repaymt of part of the ppal moys hby secured, unless at the same time repaymt of all moys outstdg and pperly chged on the sd premes is tendered
- (iv) the sd *surety* shl not be dischged or released from any liability under this deed until all moys outstdg & pperly chged on the sd premes shl have been repaid to the mtgee.

PROVISIONS FOR MAINTENANCE AND PROTECTION OF MORTGAGED PROPERTY.

1. THAT the poly[s] of assuree hby mtged is [are] not void or voidable, & that the sd poly[s or any of them] or any new poly to be effected as hrinar mentd shl not become void or voidable, & that the borr will not do or suffer anything whby the mtgee may be prevented from receivg the moys to become payable under any such poly or any pt throf, & that if any such poly has or shl become voidable, the borr will immedly thrupon at his own cost do all things neey for restorg or keepg on foot the same : AND THAT if any (g) such poly has or shl become void, the borr will immedly thrupon at his own cost effect & deliver to the mtgee, or enable him or effect a new poly or polys in his name maturing on

Covenant to keep up life or endowment policy (f).

To renew

(f) As to mortgages of life policies, see Withers on Reversions, 173. Where the mortgage comprises policies included in a prior mortgage and new policies, the former should be specified in a first and the latter in a second schedule, and the variations contained in notes (g) *infra*, and notes (b) to (f), p. 38, inserted in the form of covenant.

(g) "poly specified in the first schdle hto or any new poly or polys effected in substitution therefor shl become void, the borr will immedly at his own cost effect a new poly or polys psuant to the covts contd in the mtge of, &c., the prior mtge, & will forthwith furnish to the mtgee satisfactory evidence of such poly or polys having been effected, & that if any poly or polys specified in the second schedule hto or any new poly or polys effected in substitution therefor shl become void, the borr," &c., continue as in the text.

the death of the borr (a) or on such earlier day (if any) as the issuing office shl require in any sum or sums (exclusive of profits) not exceeding in the whole such sum as wd have been payable under the void poly if the borr had died on the day when such poly became or shl become void & all premiums & other moys (if any) necy for keepg the same in force had been pd on the first day on wch the same had become payable & such poly had not become void (b). AND FURTHER THAT every new poly shl be either profit-sharing or not & shl be effected in such office at such premiums, constant or variable, payable annually or orwise durg the life of the borr or any less period & generally with such provons as the mtgee shl think fit : AND THAT every new poly & the moys to become payable thrunder shl (c) be subj to this secy, & to the power of sale & other powers, trusts, and provons conferred by or incident to this deed in relation to the origl poly[s] & the moys to become payable thrunder : AND FURTHER THAT the borr will durg the continue of this secy duly & punctually pay the annl premium or premiums & other moys (if any) necy for keepg on foot the origl poly[s], & every new poly, when the same shl become due or within one week thrafter, & will forthwith (d) deliver

New poli-
cies to be
subject to
security.

To pay
pre-
miums.

Addition
for mort-
gage at
com-
pound in-
terest.

(a) For an endowment policy say "maturing on the day on wch the void poly wd have matured if it had been kept on foot or."

(b) Sometimes it may be desirable to add *form 1A*, p. 39. When the interest is to be accumulated, say here, "AND FURTHER that if at any time or times the moys secured by the poly or polys for the time being subj to this secy shl not exceed by 10 p.c. the amt certified by an actuary (appted by the mtgee) to be the amt wch will probably be due on this secy on the death of the borr, the mtgee may effect a new poly or polys in his name on the life of the borr for the difference betn the amt so seed as afsd & 10 p.c. over such certified amt."

(c) "subj as to the polys specified in the first schdle hto & to the new polys (if any) substituted therefor to the provons of the mtge of, &c.," *the prior mtge*.

(d) "give satisfactory evidence of the paymts made in respt of the polys specified in the first schdle hto & of the new polys (if any) substituted therefor & deliver the rect for every such paymt made in respt of the polys specified in the second schdle hto & the polys (if any) substituted therefor."

the rect for every such paymt to the mtgee: AND THAT if the borr shl at any time neglect or refuse (e) to make the paymts afsd, or any of them, or to deliver such rect as afsd, the mtgee may pay the same, and that all moys, costs, chges & expses pd or incurred by the mtgee for the pposes afsd or any of them shl be deemed to be pperly pd or incurred (f).

Power to mortga-gee to pay pre-miums on mort-gagor's default.

1A. AND FURTHER, that if the mtgee shl at any time durg the subsistce of this seey have reasonable ground for believg that the borr is about to go beyond the limits permitted by any poly for the time being subjt to this seey or to subjt his life to any extraordinary risk not covered by any such poly, or if the borr shl go beyond such limits, or shl subjt his life to such risk, then the mtgee may witht any further consent on the pt of the borr pay any extra premiums on such poly for any increased risk, or surr by way of exchange or orwise for valuable conson any poly or pols for the time being subjt to this seey & may accept in exchange or orwise effect any other poly or pols on the life of the borr in such office or offices & for such sum or sums & at such premiums either uniform or increasg or decreasg contingently on any event or orwise & generally may deal with any poly or pols for the time being subjt to this seey in the same mner as if the mtgee had been absolutely entitled to such poly: AND FURTHER, that the mtgee may effect any new poly or pols as afsd upon terms allowg the borr to travel by land or sea [or air] & with or witht restriction as to mode or limits & to reside either during his life or for any other period in any pt of the world & upon any other terms providg for any

Mort-gagee to have power to pay extra premiums for extra-ordinary risk.

Or to sur-render or exchange policy.

Or to effect new policy upon terms.

(e) "to give such evidence or."

(f) In former editions of this book provisions were inserted here charging the costs and expenses on the mortgaged property, but it is more convenient to effect the charge generally, as at p. 74, f. 11. A lien on a policy for premiums paid can be acquired by a stranger or by a part owner of the policy by reason of a contract to that effect with the beneficial owner of the policy, or where a payment is made to preserve the policy by a trustee or mortgagee, or at their request: *Re Leslie*, 23 Ch. D. 552; but a voluntary payment by a stranger will not confer a lien: *Re Jones' Settlement*, [1915] 1 Ch. 373; cf. *Falcke v. Scottish Imperial Insce. Co.*, 34 Ch. D. 234, and *Re Earl of Winchelsea's Policy*, 39 Ch. D. 168. The same principles apply where the person making the voluntary payment becomes a bankrupt: *Re Phillips*, [1914] 2 K. B. 689; *Re Stokes*, [1919] 2 K. B. 256.

other contingency or extraordinary risk for wch it may be deemed expedient to provide."

Covenant
to keep
up life
policy.
Short
form.

2. THAT the borr will duly pay the premiums & other moys payable for keepg up the sd poly or any substituted poly or pols, & produce the rectx for the same to the mtgee on demand, & will not do or suffer anythg whby the sd pols or any of them may become voidable or void : AND THAT if any such poly is or shl become voidable or void, the borr will immedly, at his own cost, do all things neey for restorg or renewg the same & will deliver any substituted poly to the mtgee : AND THAT every such substituted poly shl be subjt in all respts to this seey : AND THAT in case of default on the pt of the borr in the pformce of any of his covts in relation to the sd poly or pols, the mtgee may at the cost of the borr do what is neey to make good such default, & that any moys expended by the mtgee under this provon shl be deemed to be pperly pd by him or them.

Covenant
to keep
up guar-
antee or
sinking
fund
policy.

3. THAT the borr will durg the continue of this seey duly keep up the sd poly hby assnd (a) & produce the rectx for the premiums or other moys payable for that ppose to the mtgee, on demand, & that in case of the borr makg default in that behalf the mtgee may pay all premiums & other moys from time to time payable for keepg on foot the sd poly, & complying with the requiremts of the issuing office, & also at any time or times may effect & pay all premiums & other moys for effectg & keepg on foot any other similar poly or pols (eir in the same or any other office) in substiton for the sd poly hby assnd in such mner as he may think fit, & that all moys expended by the mtgee under this provon shl be deemed to be pperly pd by him.

Covenant
to repair
and
insure (c).
Variation
for guar-
antee
policy.
Notice.
Fires
Preven-
tion Act.

4. THAT the borr will during the continue of this seey (b)

(a) For a guarantee policy say "the poly intd to be issued by the — Co. & any substituted poly or pols."

(b) In every case in which the policy is not effected in the mortgagee's name, notice of his interest should be given to the issuing office, and if the policy is not in his possession, to the person in whose possession it is.

(c) The Fires Prevention (Metropolis) Act, 1774, s. 83 (see 54 Sol. J. at p. 357; 10 L. Q. R. 48) (which applies to the whole of England: *Sinnott v. Bowden*, [1912] 2 Ch. 414; 57 Sol. J. 108), requires an Insurance Office, at the request of any person interested in a house or buildings which may be destroyed or damaged by fire, to cause the insurance money to be laid

out towards rebuilding or repairing the damage, and enables a mortgagor or mortgagee to insist on policy moneys received under an insurance effected by the other of them to be so applied: *Sinnott v. Bowden, sup.* This right must be exercised before the Office has paid over the policy moneys to the assured: *Simpson v. Scottish Union Insurance Co.*, 1 H. & M. 618. Where the mortgage is by deed and made after the 31st December, 1881, the L. P. Act, 1925, gives power to the mortgagee at any time to insure and keep insured against fire any building, effects, or property of an insurable nature comprised in the mortgage, and to add the premiums to the mortgage debt, so as to carry interest at the same rate. By s. 108 (1) the amount of an insurance so effected by the mortgagee is not to exceed the amount specified in the mortgage, or if no amount is specified is not to exceed two-thirds of the value of the property; and (2) he is not to effect an insurance where there is a declaration in the mortgage that no insurance is required, or where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage, or where the mortgage contains no stipulation as to insurance, and the mortgagor insures to the amount in which the mortgagee is authorised by the Act to insure. By s. 108 (3) the money received on an insurance, whether effected under the mortgage deed or the Act, is, if the mortgagee so requires, to be applied in making good the loss or damage. An insurance existing at the date of the mortgage may be "effected under the mortgage deed": *Sinnott v. Bowden, sup.* at p. 421.

Provi-
sions of
the L. P.
Act,
1925, as
to in-
surance.

Subsection 4 provides that without prejudice to any obligation to the contrary imposed by law or special contract, a mortgagee may require all money received on an insurance to be applied in or towards discharge of the money due under his mortgage.

The special contract need not be contained in the mortgage under which the mortgagee claims. For example, where a second mortgage contains provisions as to the application of money to be received from a policy effected under it, a first mortgagee cannot claim that this money should be applied towards payment of the money due on his mortgage. It follows that every second mortgage should contain provisions as to the application of the insurance money, as at p. 43, note (h).

It should be borne in mind that the power to insure conferred by the Act does not apply unless the mortgage is by deed. The statutory provisions, though less full in some points of detail than the clause in the text, appear to be sufficiently protective to the mortgagee to be relied on in ordinary cases; but as the Act only gives the mortgagee power to insure in case of default of the mortgagor, and does not imply any covenant by the mortgagor to insure or produce the policy or receipts for the premiums, the mortgagee might be in a difficulty for want of knowledge whether there has been a default, and the statutory power would generally not fit the case of leaseholds where the lease contains a covenant to insure. Express provisions in lieu of or in addition to those in the statute will therefore sometimes be required. Cf. next form.

Remarks
on the
statutory
power.

The provisions as to insurance against fire do not alter the *ad valorem* stamp on the mortgage: Stamp Act, 1891, s. 88 (3). It is not the practice to stamp a mortgage with extra *ad valorem* duty on execution owing to its containing a provision charging the costs of repairs done by the mortgagee on the mortgaged property.

Stamp.

keep all messuages, bldgs (a) & ppty now or for the time being comprised in or subjt to this seey (b) in good & substantial repair & insured against loss or damage by fire (c) in not less than three fourths of the value throf [or, "to the full value throf"] (d) in the — Insee Office or in some other Insee Office or with Underwriters of repute to be approved of in writing from time to time by the mtgee in the name or names of the mtgee (e) [or, in the joint names of the borr & the mtgee, or, of the sd first mtgee or his assns] & will duly & punctually pay all premiums & other moys neey for effecting & keeping up such insee immedly on the same becoming due or within one week thafter & will on

(a) Add here if required "machinery," and after "repair" in that case say "& in perfect working order."

Lease-
holds.

(b) In the case of leaseholds where the lessee is under covenant to insure it will generally be sufficient to substitute for what follows, "in such a state of repair & insee as is required by the covts of the sd lease," adding the covenant to produce the policy and receipts, and making consequential alterations in the rest of the form.

Proviso
where
prior
instru-
ment
contains
covenants
to insure
and
repair.

Where the property is subject to a mortgage or to leases or underleases containing covenants to insure and repair, add at the end of the form—

"PROVD ALWAYS that all repairs made to the mtged premes & any insee against loss or damage by fire effected & maintained in psuance of the covts contd in the sd mtge, *the prior mtge, or, 'in the sd [under]leases' shl, on production by the borr to the mtgee of satisfactory evidence as to the state of repair of the mtged premes & as to such insurances being in force & the paymt of the premium or premiums or other moys payable in respt throf, be accepted by the mtgee in satisfon or pt satisfon of the covts to repair & insure hrinbfe contd notwithstanding that the borr may be unable to deliver or produce the sd pols or the receipts to the mtgee.*"

(c) Add if desired "& also all plate glass windows for the time being on the mtged premes against injury whether accidental or orwise."

(d) If preferred say "in the sum of £—— at the least," and in appropriate cases add "wch shl be distributed between the several houses & bldgs hby mtged in the mner provd in the schdle hto or as near thereto as may be."

(e) As to the form of the policy which will satisfy this covenant, see *Enlayde v. Roberts*, [1917] 1 Ch. 109; and cf. *Upjohn v. Hitchens*, [1918] 2 K. B. 48.

demand produce to the mtgee the poly or polys of such insce & the receipt for every such paymt. And that if default shl at any time be made by the borr in keeping the sd premes or any pt throf in good & substantial repair (f) or in effecting or keeping up such insce as afsd or in producing any such poly or receipt to the mtgee on demand the mtgee may repair & keep the sd premes or any pt throf in repair (g) (with power to enter upon the mtged premes for that ppose) or may insure & keep the same insured in any sum not exceeding £—. And that all moys expended by the mtgee under this provon shl be deemed to be pperly pd by him (h).

5. *Covt to insure to the end of the covt to produce rects as in last form:* AND that if the borr shl on demand at any time refuse or neglect to produce any such poly or rect to the mtgee, he shl be entitled to assume that the sd premes are not insured in accordce with the covt hrinbfe contd, & may exercise all the powers & have all the rts conferred by statute in that behalf.

Provisions as to insurance supplemental to the statutory power (a).

6. THE BORR will durg the continue of this secy keep all rents liable to be suspended in case of fire under any lease or

Covenant to insure against

(f) For machinery add “& in perfect working order.”

(g) For machinery add “& put the same into pper working order.”

(h) The following may be added, if appropriate:—“AND THAT all moys wch may be reced by virtue of any such poly shl be applied in makg good the loss or damage, or, ‘and that all moys received by virtue of any such poly in respt of the loss or damage by fire of any houses or bldgs thby insured shl be applied in makg good the loss or damage, & any moys reced in respt of the loss or damage by fire of any ppty other than houses or bldgs shl either be applied in makg good the loss or damage, or if so required, by notice in writing given by the mtgee to the borr, or left on the mtged premes, within — days after the occurree of such loss or damage, shl be applied in or towards dischge of the moys for the time being owing on this secy.’ ”

Special provision as to application of insurance moneys.

The provision giving the mortgagee the option of applying the insurance moneys in discharge of the mortgage may operate somewhat hardly on the mortgagor, and it may be desirable in some cases to exclude the statutory provision as to this: see s. 108 (3) and (4) of the L. P. Act, 1925.

(a) See *ante*, p. 40, note (c).

suspension of
rent.

agrm't for tenancy of the mtged premes or any pt throf insured against suspension to the full value throf in an Insee Office to be approved of by the mtgee in the joint names of the borr & the mtgee & every such insee shl be subj't to the provons hrinbfe contd as to insces agst fire so far as the same are applicable: **PROVD THAT** all moys received from time to time in respt of such insee shl be pd into the ——— Bank to an acct to be kept in the names of the borr & the mtgee & shl be applied from time to time in or towards satisfon of any intt for the time being due or to become due on the next half-yrly [**qtrly**] day on wch any intt is made payable under this seey and all moys not so applied shl be pd to the borr.

Power to
insure
against
accident,
&c.

7. THE MTGEE may insure & keep the mtgee while in posson of the mtged premes & any receiver for the time being appointed under this deed insured agst liability for damages on acct of injuries (whether fatal or not) sustained by any pson or psns by reason of any defect (whether structural or orwise) in the mtged premes or in any furniture, chattels or machinery thron, & also against any liability under the Employers' Liability Act, 1880, or the Workmen's Compensation Acts, 1906 to 1923, or any Act amending or re-enacting the same resply, in such Insee Office as the mtgee shl think fit, & he may pay such premiums & other moys neey or pper for effectg & keepg up such insces, & all moys expended by the mtgee for that ppose shl be deemed to be pperly pd by him. And it is hby declared that all moys wch may be received by virtue of any such poly shl be applied in discharge of the liability insured against or in repaymt of any expses wch may have been already incurred in discharge of such liability.

Covenant
to pay
outgoing
(b).

8. THAT during the continue of this seey the borr will pay and discharge & indemnify the mtgee against all rates, taxes, duties (c), charges, assessmts, & outgoings whatsr (whether

(b) There are many Acts authorising a Local Authority to recover expenses from the "owner or occupier" of land. The effect of this form is to indemnify the mortgagee or a receiver while in possession against all payments made by him in respect of any such Act, and, if f. 11, p. 74, is used, to enable him to recover them from the mortgagor on demand.

(c) The land values duties imposed by Part I. of the Fin. (1909-10) Act, 1910, have been repealed by the Fin. Act, 1920, s. 57, with the exception of mineral rights duty. The first mentioned Act contains no provision allowing a mortgagee to add to his security any mineral rights duty paid by him.

parliamentary, parochial, local, or of any other description) wch shl be assessed, charged, or imposed upon or payable in respt of the mtged premes or any pt throf by the borr, or the mtgee, or a receiver in respt throf, & that if the borr shl at any time refuse or neglect to make such paymts or to deliver the receipt therefor to the mtgee on demand he may pay the same & all moys expended by the mtgee under this provon shl be deemed to be pperly pd by him.

9. THAT the borr will from time to time durg the continue of this secy, at his own cost, procure the psnt lease of the leasehd premes hby mtged to be renewed psuant to the covt in that behalf contd in the sd psnt lease; the mtgee doing or concurrng in all such acts as may be necy or pper for obtaining such renewals: AND that the borr will immedly after obtaining such renewed lease, subdemise the same & the premes comprd thrin to the mtgee, for the entire term created thby less the last ten days, subjt to such right of redmon as shl then be subsistg by virtue of this deed, [& subjt to the recited mtge of the —— day of —— & the moys thby secd] & in the meantime will stand possed of the renewed lease [subjt, &c., as in last bracket] in trust for securg to the mtgee the moys hby secd: AND FURTHER, that if the borr shl refuse or neglect to procure the renewal of the sd lease as afsd, & to pay the fines, fees, & costs attendg the renewal throf, the mtgee may obtain such renewal in his own name [or in the name or names of the pson or psons then entitled to the moys secd by the sd mtge of the —— day of ——] or orwise: AND that all moys expended by the mtgee under this provon shl be deemed to be pperly pd by him.

Covenant for re-
newal of
lease.

Variation
where
lease is
subject
to prior
mort-
gage.

10. That durg the continue of this secy no pson or psons shl be regrd under the Land Registration Act, 1925; or any Act amend- ing or re-enacting the same, as proptor or proptors of the

Covenant
against
registra-
tion (a).

(a) If the land is not registered at the date of the mortgage, and subsequently it is registered, the mortgagee will be unable to convey the land by registered transfer to a purchaser unless he can obtain the land certificate. Under this clause he will be able, by threatening to apply for an injunction against registra- tion, to force the applicant for registration to hand the land certificate to him, or, which may be preferable, he may obtain registration as proprietor o an incumbrance under L. R. R. 160. It need hardly be stated that the clause should not be inserted if the land is registered.

Registra-
tion.

If the owner of an equity of redemption registers himself as proprietor, great inconvenience may arise on a sale by the mortgagee. He appears to be bound to

Protec-
tion of

[leasehd] (b) ppty hby mtged or any pt throf witht the consent in writg of the mtgee, & that the costs incurred by the mtgee of lodgg from time to time a caution agst registron of the sd ppty shl be deemed to be costs pperly incurred by him under this deed.

Powers for protection of a mortgage of equitable interests (c).

mortgagees of unregistered land.

11. THE MTGEE may at any time or times during the continuance of this secy as well bfe as after the sd — day of — give such notices, obtain such stop (d) or other

procure the registration of himself as proprietor, or to procure a transfer from the registered proprietor to the purchaser: L. R. Act, 1925, s. 110 (5). Sections 4 and 8 of that Act expressly except mortgagees of freehold and leasehold land respectively when there is a subsisting right of redemption from among the persons entitled to apply for registration. If the registered proprietor refuses to execute a transfer, the Registrar may, on notice to the registered proprietor, and on production of the land certificate and such other evidence as he may consider sufficient, make the proper entry on the register for the purpose of carrying out the sale: L. R. R. 131. It must, however, be remembered, that great delay and expense may be incurred in obtaining the production of the land certificate, &c.; add to which that the Registrar might probably require some evidence of the title of the person applying for registration. It is, therefore, a prudent precaution for a mortgagee of unregistered freehold land in a compulsory district who does not get the deeds to put on a caution against first registration (L. R. Act, 1925, s. 53; L. R. R. 64, *et seq.*). On notice being served on him of an application for registration, he can call in his money, or can take steps to have himself registered as proprietor either of the mortgage under L. R. R. 160, or of a registered charge.

(b) In the case of leaseholds mortgaged prior to registration the same difficulty has never arisen, inasmuch as the mortgagee's term being paramount to the head term when the latter was placed upon the register, the mortgagee could sell under the power of sale contained in the mortgage deed: *Re Voss & Saunders*, [1911] 1 Ch. 42.

(c) This form should only be used in mortgages of life or reversionary interests, policies, &c., and other exceptional cases.

As to stop orders.

(d) As to the priority conferred by obtaining a stop order, see *Withers on Reversions*, 147; *Pinnock v. Bailey*, 23 Ch. D. 497; *Re Holmes*, 29 Ch. D. 786; *Mutual Life Assurance Society v. Langley*, 32 Ch. 460; *Mack v. Postle*, [1894] 2 Ch. 449; *Montefiore v. Guedalla*, [1903] 2 Ch. 26; and where there is a derivative settlement, *Stephens v. Green*, [1895] 2 Ch. 148. Where a fund is paid out, in the absence of a stop order, to a person apparently entitled the Paymaster-General is not in default: *Bath v. Bath*, [1901] 1 Ch. 460; and *Re Williams*, [1910] 2 Ch. 481. Where a mortgagee is empowered by the mortgage deed to obtain a stop order, he is entitled to his costs of doing so: *Waddilove v. Taylor*, 6 Hare, 307. As to the importance of obtaining a fresh stop order on making a further advance, see *Macleod v. Buchanan*, 4 De G. J. & S. 265. The application may now generally be made by summons, but a petition is necessary where a fund exceeding £1,000 has been paid into court under the T. Act, 1925, s. 63, and no prior application has been made in the matter of the fund;

orders, make such enquiries, obtain such information & evidence, take such proceedings & do all such other acts for the ppose of perfecting, proving or upholding his title to all or any pt of the mortged premes or ascertaining the parlars of or dealings with all or any of such premes or the ppty out of wch the same are derived, or protecting this secy as the mtgee shl think fit, & for all or any of such pposes may use the name of the borr as an authorising or consenting pty, & may instruct solors & counsel to act on his behalf accordingly, & all moys expended by the mtgee under this provon shl be deemed to be pperly pd by him.

12. THE MTGEE may settle & pass the acets of any incumbrancer for the time being having priority over this secy [& may accept a statemt in writing signed by any such incumbrancer, or in the case of a corporon by their secretary, as to the amt due for ppal, intt & orwise in respt of his or their incumbrance (a)], & all acets so settled & passed [& all statemts so accepted] shl be conclusive in favour of the mtgee or his assns & shl bind the borr.

Power to settle accounts.

13. THAT during the continuee of this secy the borr [or his successors in business] will carry on the business of — upon the messuage hrinbfe mtged & will keep pper books of acct of the sd business & make full entries thrin of all the dealings & transactions of the sd business & will keep such books & all letters, papers, & documts belonging or relating to the sd business upon the mtged premes & will at any time (if required) produce the same for the inspection of the mtgee & allow him or any pson appointed in writing by him to have free access thereto & to make copies & extracts of & from the same.

Covenant to carry on business, and keep accounts in mortgage of business.

14. THAT during the continuee of this secy the borr will keep pper books of acct of all receipts, paymts, & outgoings in

Covenant to keep accounts

Re Toogood, [1887] W. N. 109. As to stop orders generally, see *R. S. C.*, 1883, Order 46; *Seton*, 7th ed. 483, 486; *Daniell*, Ch. P., 8th ed. 1428 *et seq.* The order should distinguish between capital and income affected by it; *Mack v. Postle*, [1894] 2 Ch. 449. As to the protection afforded to incumbrancers by a fund having been carried to a separate account, see *Re Eyton*, 45 Ch. D. 458; *Edgar v. Plomley*, [1900] A. C. 431; *Cloutte v. Storey* [1911] 1 Ch. 18.

(a) The power conferred on the mortgagee by the words in this bracket could only be justified under very exceptional circumstances.

in mort-
gage of
land or
buildings.

respt of the mtged premes (b) & will at any time allow the mtgee to inspect & make copies of & extracts from the same & will on the — day of — next & on every subsequent — day of — or within twenty-one days thrafter produce [give a copy of] the accts for the then preceding yr (c) to the mtgee together with a statemt signed by or on behalf of the borr showing what portions of the mtged premes are let on such — day of — & the names of the tenants & the rents throf & will give satisfactory evidence as to the correctness of such accounts & statemt & in parlar will (if required) verify the same by statutory declaron.

Covenant
by mort-
gagor to
perform
cove-
nants of
under-
lease (d).

15. THAT during the continue of this seey the borr will punctually observe & pform the covts & agrmts by the lessor & condons contd in every [under] lease or tenancy agrmt for the time being affecting the mtged premes or any pt throf & will within seven days after demand produce to the mtgee satisfactory evidence of the observance & pformance of the sd covts, agrmts, & condons: AND FURTHER that the borr will indemnify & keep indemnified the mtgee against every such covt, agrmt, & condon as afsd, & against all actions, proceed-ings, costs, charges, claims, & demands in respt throf: AND that all moys pd by the mtgee & the costs, charges, & expenses incurred by him in the observance & pformance of the sd covts, agrmts, & condons shl be deemed to be pperly pd & incurred by him.

Covenant
to

16. THAT the borr will forthwith with the concurrence of

(b) If the accounts are long, say “& will cause such accts to be audited at the cost of the borr or his assns by Messrs. — or some other chartered accountant to be nominated by the mtgee or his assns at least one calendar month bfe the — day of — in every yr.”

(c) In the case mentioned in note (b), say “give to the mtgee a certificate signed by the auditor that such accts are correct together with an epitome of the sd accts.”

(d) This form is intended for use in special cases, as, for example, in a mortgage of a building let out in flats. Where the mortgaged property is leasehold it is unnecessary for the mortgagor to covenant to pay the rent and observe and perform the lessee's covenants and conditions in the head lease. This is implied by the mortgagor conveying as beneficial owner; L. P. Act, 1925, s. 76 and Part III. of the Second Schedule.

the mtgee appoint & will at all times during the continue of this seey with the like concurrence employ a pper pson as the atty of the borr to manage such pts of the mtged ppty as shl not for the time being be comprised in any [under] lease or tenancy agrmt affecting the mtged ppty, & as such atty specifically to pform the covts & agrmts by the lessor in any such [under] lease or tenancy agrmt with power for such atty for that ppose to appoint at such wages as he may think pper, & to dismiss servants & workmen & to pchase & pay for such goods as may be necy or pper for the pposes afsd. AND FURTHER that the borr will duly pay the salary of such atty & the wages of such servants & workmen & pay for such goods, & that if the borr shl refuse or neglect to make the paymts afsd, or any of them, the mtgee may pay the same, & all moys so pd by him shl be deemed to be pperly pd.

appoint a manager (e).

17. THAT during the continue of this seey no timber or timber-like trees (aa) standing or growing on the mtged premes or any pt throf shl be cut except in the ordinary course of good managemt & at the usual times [or with the previous consent in writing of the mtgee].

Timber only to be cut in ordinary course of management (a).

18. THAT for the ppose of ascertaining whether the sd bldgs [& machinery] are in repair [& in pper working order] psuant to the covt in that behalf hrinbfe contd the mtgee may from time to time during the continue of this seey cause the sd bldgs [& machinery] to be surveyed by a competent surveyor to be appointed by the mtgee upon such terms as to remuneration & orwise as the mtgee shl think pper, & may pay such remuneration to such surveyor. AND

Powor to mort-gagee to have buildings, &c., surveyed.

(e) This form may be useful where, as in the case of a mortgage of buildings let out in flats, either for residential or manufacturing purposes, the mortgagor is bound by his covenants as lessor to do something with the unlet parts, as, e.g., to provide a hall porter and keep the stairs clean, or to provide steam for machinery.

(a) In the case of a large timber estate it may be expedient to appoint some person to cut and sell timber and to apply the proceeds towards payment of the principal mortgage moneys. The power to appoint a receiver (*post*, p. 77) can be readily adapted for this purpose. A power of cutting and selling timber is vested in a mortgagee in possession by s. 101 (1) (iv) of the L. P. Act, 1925.

(aa) As to the necessity for these words, see *Re Tower's Contract*, [1924] W. N. 331.

THAT any surveyor appointed under this provon may enter upon the mtged premes for the ppose of making his survey, & his certificate shl be conclusive as to the adequacy of the repair [& working order] of the sd bldgs [& machinery]. AND THAT ALL moys pd by the mtgee under this provon shl be deemed to be pperly pd by him.

Power to have property valued.

19. THE MTGEE may in the year — & in every subsequent sixth year cause the mtged premes to be inspected & valued by a valuer to be appointed by the mtgee on such terms as to remuneration & orwise as the mtgee may think fit, & may pay such remuneration to the sd valuer. AND all moys pd by the mtgee under this provon shl be deemed to be pperly pd by him.

Valuation of shares, &c.

20. IF & so often as on any day appointed by the mtgee the total value (estimated in mner hrinar mentd) of the stocks, shares, funds & debentures comprised in this secy shl be less than the sum of £—— the borr shl forthwith pay to the mtgee the difference between such value & the sum of £—— (b), & the sum so pd shl be applied by the mtgee in or towards paymt in the first place of the costs of the valuation hrinar authorised to be made, & in the next place in or towards paymt of the arrears (if any) of intt, & afterwards in or towards paymt of the ppal moys then due on this secy. AND it is hby agrd that such total value shl be estimated at the lowest prices current for the stocks, shares, funds & debentures resply comprised in this secy on the London Stock Exchange on the appted day as certified by a broker being a member of the sd Exchange to be appted by the mtgee at such remuneration as he shl think pper.

Indemnity as to and covenant to perform restrictive covenants (d).

21. THAT the borr will, durg the continuee of this secy, duly observe & pform the covts & provons restrictive of or relatg to bldg on, or the mode of user or enjoymt of the mtged premes or any pt throf weh are contd in an indre [deed] dated, &c., & made, &c. (c): AND will keep the mtgee indemnified in respt

(b) This will be the value of the stocks, &c., at the date of the mortgage.

(c) Where, as in a mortgage of a building let out in flats, the mortgaged property is subject to leases containing onerous covenants by the lessor, add here: “& also duly observe & pform the covts by the lessor contd in any lease now already or hrafter to be grted of any pt or pts of the mtged premes.”

(d) No cause of action on the covenant in the text arises until enforce-

of all actions, proceedings, claims, costs, & damages occassd by any breach of any of such covts or provons, & that any costs or damages incurred by the mtgee by reason of any such breach shl be deemed to be pperly incurred by him or them.

POWERS OF SALE.

PRELIMINARY NOTE.

By the L. P. Act, 1925, s. 101 (1), a mortgagee, where the mortgage is made by deed after 1881 (s. 101 (5)), has to the like extent as if the power had been conferred by the mortgage deed, but no further (among other powers), a power, when the mortgage-money has become due, to sell or concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior charges or not, with the usual provisions as to the mode of sale, &c.; (by s. 104 (1)) to convey to the purchaser the estate or interest authorised by the Act, *i.e.* in the case of freeholds the fee simple (s. 88), and in the case of leaseholds the mortgage term together with the leasehold reversion expectant thereon unless expressly excepted with the leave of the Court (s. 89), (save in the excepted cases mentioned, *ante*, pp. 3, 4), in both cases subject to any legal mortgage having priority over the mortgage in right of which the sale is made; and (by s. 107) to give receipts for the purchase-money. The case of a sale by a sub-mortgagee is provided for in sub-sect. (5) of ss. 88 and 89 for freeholds and leaseholds respectively. In the case of sales in exercise of the statutory or an express power of sale the conveyance may be made in the name of the estate owner: ss. 88 (2), 89 (2). Even if made in the name of the mortgagee a conveyance under the statutory power of sale operates under s. 9 (1) (e) as if executed by the estate owner. By sub-sect. 4 of ss. 88, 89, the statutory power of sale extends to the absolute or other interest affected by any charge contained in a mortgage of land which includes fixtures or chattels personal. It has been decided, and there appears to be nothing to the contrary in the L. P. Act, 1925, that a mortgagee of freeholds and fixed machinery cannot sell the fixed machinery apart from the freeholds, whether the machinery passes only as being affixed to the land: *Re Yates*, 38 Ch. D. 112; or as otherwise included in the mortgage: *Re Brooke*, [1894] 2 Ch. 600. As to a mortgagee of leaseholds with trade fixtures, see *Southport, &c., Co. v. Thompson*, 37 Ch. D. 64; *Reynolds v. Ashby & Son*, [1904] A. C. 466; *Re Rogerstone Brick & Stone Co.*, [1919] 1 Ch. 110, and *post*, p. 175. A person who was before the 1st of January, 1926, a mortgagee of an undivided share in land has under s. 102 the same power to sell his share in the proceeds of sale and in the rents and profits until sale as independently of the Act he would have had in regard to the share in the land. A conveyance made by a mortgagee after the 31st December, 1925, is by s. 104 (3) deemed to have been made in exercise of the power of sale conferred by the Act unless a contrary intention appears.

ment or threatened enforcement of the restrictive covenant by the original covenantee: *Reckitt v. Cody*, [1920] 2 Ch. 452.

Provi-
sions as
to events
in which
power ex-
ercisable.

By s. 103 the power of sale is not to be exercised unless and until (i.) notice requiring payment of the mortgage-money has been served on the mortgagor (which by s. 205 (1) (xvi) includes any person deriving title under the original mortgagor, or entitled to redeem the mortgage), or one of several mortgagors, and default has been made in payment of the mortgage-money, or part thereof, for three months (*i.e.* calendar months: s. 61) after such service, *Barker v. Illingworth*, [1908] 2 Ch. 20 (and see the full and protective provisions in s. 106 as to the mode of giving the notice, and *post*, pp. 324, 325, as to the form of notice), or, (ii.) some interest under the mortgage is in arrear and unpaid for two months after becoming due (which includes the case of an instalment consisting of principal and interest being so in arrear: *Walsh v. Derrick*, 19 T. L. R. 209), or, (iii.) there has been a breach of some provision contained in the mortgage or in the Act, and on the part of the mortgagor or some person concurring in the mortgage to be observed or performed, other than the covenant for payment of the mortgage money or interest thereon; but s. 104 (2), provides for the protection of the purchaser, even if he makes no enquiries, in case of a sale which is unauthorised or without proper notice or otherwise irregular, the person damnified having his remedy in damages against the person exercising the power; but it does not protect the purchaser if the power has not arisen, as to which see *post*, p. 53. A *bonâ fide* purchaser without notice would be protected: *Bailey v. Barnes*, [1894] 1 Ch. 25; even if the security has been satisfied: *Dicker v. Angerstein*, 3 Ch. D. 600; but not if he knows of an irregularity which cannot have been waived: *Parkinson v. Hanbury*, 1 Dr. & Sm. 143; L. R. 2 H. L. 1; followed in *Selwyn v. Garfit*, 38 Ch. D. 273; *qu.*, however, where the irregularity is one which might have been waived (*per* Bowen, L.J., 38 Ch. D. 285). As to the meaning of "waiver" see *ib.* 284; *Re Thompson & Holt*, 44 Ch. D. at p. 500. A person to whom the mortgagee has contracted to sell under the statutory power is not entitled to enquire whether the events have happened which enable the power to be exercised, and the sale is not impeachable on that ground: s. 104 (2); over-ruling on this point: *Life Interest, &c., Corp. v. Hand in Hand, &c., Socy.*, [1898] 2 Ch. 230. As to the third event in which the statutory power of sale is made exercisable, it appears that there is no provision in the Act which is "to be observed or performed by the mortgagor," except to hand over the counterparts of leases granted by him; s. 99 (11). Where after the 31st of December, 1925, the power of sale, whether statutory or express, is made exercisable on the commission by the mortgagor of an act of bankruptcy or on his adjudication, the power can only be exercised by leave of the Court if no other breach has occurred to render the power exercisable: s. 110.

Other
provi-
sions.

Sect. 105 provides for the application of the purchase-money after discharge of prior incumbrances to which the sale is not made subject, or after payment into Court under the Act (s. 50), of a sum to meet any prior incumbrances, first, in payment of the costs of the sale or any attempted sale, next, of the mortgage-money, interest, and costs, and the residue of the money so received is to be paid to the person or persons entitled to the mortgaged property, or authorised to give receipts for the proceeds of sale (see as to this where there has been a second mortgage, *West London, &c., Bank v. Reliance, &c., Society*, 29 Ch. D. 954; and where there has been a voluntary settlement of

the mortgaged property, *Re Walhampton Estate*, 26 Ch. D. 391). By s. 106 (1) the power may be exercised by any person entitled to receive and give a discharge for the mortgage-money; but these words do not extend to everybody who has a power to give a receipt and discharge. The subsection is intended to apply only to those persons who are either mortgagees or have vested in them the property of the mortgagees, such as executors, and does not extend to a person entitled to give a discharge as agent; *Re Dowson and Jenkins*, [1904] 2 Ch. 219. By s. 106 (2), it is not to affect the right of foreclosure; as to the effect of an order for foreclosure *nisi* on the power of sale, see *Stevens v. Theatres, Ltd.*, [1903] 1 Ch. 857; by s. 106 (3), the mortgagee is protected from involuntary losses in the exercise of the statutory power of sale or any power or provision contained in the mortgage deed, and by s. 106 (4), he is empowered, after the power of sale has become exercisable, to recover from any person not having an estate or interest or right in priority to the mortgage any of the title deeds which would have been recoverable by a purchaser under the power of sale.

The power of sale and other powers of the mortgagee and the powers relating thereto may be varied or extended by the mortgage deed; and are to apply only if and so far as a contrary intention is not therein expressed: s. 101 (3), (4), as to which see *Life Interest, &c., Corp. v. Hand in Hand, &c., Socy.*, [1898] 2 Ch. 230, and *Cripps v. Tompsett*, unreported, see 46 Sol. J. 679.

Statutory powers may be varied.

Section 101 (2) (discussed 56 Sol. J. 250, 267), provides that the statutory power of sale shall, where the mortgage deed is executed after the 31st December, 1911, include power to impose restrictive covenants or conditions on the unsold part of the mortgaged property or on the purchaser, and any property sold, and to sell the mortgaged property or any part thereof, or any mines and minerals apart from the surface with or without a grant or reservation of rights, &c., for building or other purposes in relation to the property remaining in mortgage or the property sold, and with or without an exception or reservation of mines and minerals, and with or without a grant or reservation of powers of working easements, &c., for or connected with mining purposes in relation to the property sold or retained, and with or without covenants by the purchaser to expend money on the land sold.

The Act applies to mortgages of any property real or personal (except bills of sale of chattels which are governed by the Bills of Sale Act, 1882, *Calvert v. Thomas*, 19 Q. B. D. 204), and whether the mortgage is legal or equitable; but the mortgage must be by deed. The statutory powers do not therefore apply to a mortgage by deposit accompanied by a memorandum not under seal.

To what mortgages the Act applies.

It is provided by s. 101 (1) (i), that the statutory power of sale thereby conferred is to arise "when the mortgage money has become due." This provision has been paraphrased to mean when default has been made in payment according to the tenor of the deed: see *Barker v. Illingworth*, [1908] 2 Ch. at p. 23, and cf. the dicta in *Re Moss*, [1905] 2 K. B. at p. 314, and *Re British Salicylates, Ltd.*, [1919] 2 Ch. at p. 314, that money is due when payment thereof is enforceable. It follows that in the case of a mortgage in the ordinary form containing a covenant for payment of the principal on the day fixed for redemption, the mortgage money becomes due and the statutory power arises on that day, although in the absence of express contract it will not be presently exercisable, see *Selwyn v. Garfit*, 38 Ch. D. 273; *Barker v. Illingworth*, *sup.*; but where the mortgage deed contains, in addition, a provision for the continuance of the loan for a

Adequacy of statutory power depends upon the manner in which mortgage framed.

term of years conditional on the punctual payment of interest or otherwise, or for repayment by instalments, it seems, though it may be open to question, that default will not have been made in payment according to the tenor of the deed, and that the statutory power of sale will not therefore arise until the restriction on the mortgagee's right to require payment of the mortgage money in accordance with the mortgagor's covenant has ceased to be effective. To obviate any doubt on this point it will be proper to include in the provision a statement that the mortgage money shall be considered as due for the purposes of the Act on the day on which it is covenanted to be paid. See ff. 2 and 4, *ante*, pp. 29, 30. Where, the only covenant for payment in the mortgage deed is a covenant to pay at a distant date, or to pay by instalments with a proviso that on default in payment of any instalment the whole of the mortgage money shall immediately become due (in which latter case default must be proved by the mortgagee in order to satisfy a purchaser of the existence of the statutory power), and *à fortiori* where the covenant for payment by instalments is followed by no such proviso, the statutory power of sale is inadequate to meet the requirements of the case, and it will usually be proper to insert an express power, framed, if need be, by reference to the statutory power, see f. 2, *post*, p. 57, and this necessity is not obviated by s. 104 (2). Where the covenant is for payment on demand there seems no objection to relying upon the statutory power of sale provided that the statutory restrictions are expressly excluded: see *Re Brown*, [1893] 2 Ch. 300, approved in *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.

Notice.

There may be a question as to what would be a sufficient notice to pay off the mortgage-money under s. 103 where there is a second incumbrance (as in *Hoole v. Smith*, 17 Ch. D. 434), but probably notice to any person interested in the equity of redemption would be held sufficient; or in the case of a mortgage of land it would be sufficient to affix it to the mortgaged premises, see s. 196.

Mort-
gagee to
what ex-
tent in
fiduciary
position.

The Court will not interfere with a mortgagee exercising his power of sale (however disadvantageously) for the purpose of realising his debt if done *bonâ fide* and without collusion with the purchaser, *Warner v. Jacob*, 20 Ch. D. 220; *Haddington, &c., Co. v. Huson*, [1911] A. C. 722 (discussed 56 Sol. J. 221); *Belton v. Bass*, [1922] 2 Ch. 449. As to the liability of a mortgagee selling subject to compensation for errors in the particulars being allowed to the purchaser, see *Tomlin v. Luce*, 43 Ch. D. 191. A mortgagee in exercising his power is not, except as to the balance of his purchase-money after a sale, a trustee for the mortgagor, even if the mortgage is in the form of a trust for sale (*ib.*). But as to the balance of the purchase-money he is, under ss. 105 and 107, a trustee for subsequent mortgagees and the mortgagor, and cannot refuse to hand over such balance to a second mortgagee merely because the latter claims and, on obtaining the balance, can retain thereout more than six years' arrears of interest: *Re Thomson's Mortgage Trusts*, [1920] 1 Ch. 508. As to the exercise of the power by a mortgagee who is the solicitor of the mortgagor, see *Macleod v. Jones*, 24 Ch. D. 289. A sale by a mortgagee to a trustee for himself is invalid: *Henderson v. Astwood*, [1894] A. C. 150. As to a sale to one of several mortgagors, see *Kennedy v. De Trafford*, [1897] A. C. 180. A mortgagee after acquiring a title under the Limitation Acts can enlarge his mortgage term into a fee simple under the combined operations of ss. 88 (3), and 153 discharged from the mortgage, or in the case of a mortgage by way of legal charge can by

Mort-
gagee
solicitor
of mort-
gagor.

deed declare the fee simple to be vested in him so discharged: s. 88 (3). The fee simple thus acquired, he may sell as an ordinary estate owner.

The surplus proceeds of sale of a mortgage comprising both interests in land and personal property are personal estate: *Re Grange*, [1907] 2 Ch. 20: and whether the mortgage deed expressly so declares, or, in the case of some mortgages under the old law, makes such surplus proceeds payable to the heirs and assigns of the mortgagor, will be payable to the personal representatives of the mortgagor if the sale takes place after his death: Administration of Estates Act, 1925, s. 1 (2); or into Court under the Trustee Act, 1925, s. 63.

The statutory power of sale is adapted for use and may be safely relied on, as it is in practice, in all ordinary cases (except for property situate abroad), where a fixed day is appointed for payment of the mortgage money not more than six months from the date of the mortgage deed; and may be varied or extended if need be. If the mortgage is not intended to carry a power of sale, the Act must be expressly excluded.

By s. 7 of the Increase of Rent, etc. Act, 1920, as extended by the Rent etc. Acts, 1923 to 1925, restrictions are imposed on the exercise by a mortgagee of his power of sale under any mortgage to which the Act applies (s. 12 (4)): see *Evans v. Horner*, [1925] 1 Ch. 177, and cases there cited.

Surplus sale moneys in mortgage of real and personal estate.

Use of statutory power of sale.

Temporary restrictions upon exercise of Power.

1. THE MTGEE may at any time or times after the sd — day of — next, *the day apptd for paymt*, witht any further consent of the borr sell the mtged premes or any of them or any pt or pts throf, either togr or in peels, & eir by public auction or private contract (b), & subjt to any special or other stipulons or condons as to title or evidee of title or orwise wch may be deemed pper, with power to buy in at any sale by auction, & to rescind or vary any contract for sale, & to re-sell the premes wch shl have been so bought in, or as to wch the contract for sale shl have been rescinded, witht being responsible for any loss occasioned thby (c), & for

Full form (a). Power to sell and convey.

(a) It will seldom be necessary to insert in the mortgage deed a full power of sale. The form in the text may, however, still be required in mortgages of property situate in the colonies, and will sometimes be found useful in connection with form 6, p. 58.

(b) For a policy of assurance, add here:—" & as to any policy of assurce eir by way of surr to the office granting the same or orwise."

Variation for policy.

(c) If the mortgage is subject to prior charges, add here: "& to make any such sale as afsd, either subjt to the sd prior mtge or charge of the — day of — [or, "subjt to any prior charges or incumbces affectg the premes sold or any pt throf, whether bindg on the pson or psons exercisg this power or not"], or any pt throf, or dischgd thfrom, & in the latter case either

Variation for prior charge.

Events in
which
power is
to be
exercised.

Proviso
for pro-
tection
of pur-
chasers.

the pposes afsd may exte & do all such assurances & things as he shl think fit : PROVD ALWAYS, that the mtgee shl not exercise the power of sale hrinbfe contd, unless & until default shl have been made in paymt of some moys hby seed, & he shl have given a notice in writing to the borr, to pay off the moys for the time being owing on this secy, or left a notice in writing to that effect at or upon some pt of the mtged premes (d), & default shl have been made in paymt of such moys or pt throf for *six* calr months from the time of giving or leaving such notice, or unless & until some intt owing on this secy shl be in arrear for *three* calr months [or unless & until default shl have been made in the pformce or observee of some covt or provon hrin contd, & on the pt of the borr to be pformed or observed, other than the covt for paymt of the sd ppal moys & intt], & any such notice as afsd shl be sufft although not addressed to any pson by name or descron, & although any pson or psons affected thby may be unborn, unascertained, or under disability : PROVD ALSO that, upon any sale purportg to be made in psuance of the afsd power in that behalf, the pchaser or pchasers shl not be bound to see or enquire whether either of the cases mentd in the provo lastly hrinbfe contd has happened, or whether any default has been made in paymt of any moys hby seed, or whether any moy remains owing on this secy, or as to the necessity or expediency of the condons subjt to wch the sale is made, or orwise as to the regularity of the sale, or be affected by express notice of any irregularity whatsr thrin, & notwg any such irregularity such sale shl, as far as regards the safety & protection of the pchaser or pchasers, be deemed to be within the afsd power in that behalf, & be valid & effectual acedly, & the remedy of the borr in respt of any breach of the provo lastly hrinbfe contd, or of any irregularity in such sale shl be in

upon the terms of the same, or any pt throf, being dischged or provd for out of the pchase-moy or by paymt into Ct or orwise."

Variation
for per-
sonalty.

(d) For personalty, instead of "at or upon some pt of the mtged premes," say, "or sent such notice by post in a regrd letter addressed to him or them at his or their usual or last known place or places of abode or business in England." As to the mode of serving notices, see L. P. Act, 1925, s. 196.

damages only : AND IT IS HBY agrd that upon any such sale as afsd the rect of the mtgee for the pchase-moy (e) shl effectually dischge the pchaser or pchasers thfrom, & from being concerned to see to the applicon throf or being answerable for the loss or mis-applicon throf : AND IT IS HBY further agrd that the mtgee shl hold the moys to arise from any such sale as afsd (a) upon trust in the first place, by & out of the same to reimburse himself & to pay all costs & expses incurred in or about such sale (b) or orwise in respt of the premes : AND in the next place, to apply such moys in or towards satisfon of the moys for the time being owing on this secy (c), & then to pay the surplus (if any) of the sd pchase-moys to the borr (d) : AND IT IS HBY further decl'd that the afsd power of sale may be exercised by any pson or psons who shl for the time being be entitled to receive & give a dischge for the moys owing on this secy.

Receipt clause for purchase-money.

Trusts of purchase-money.

Power may be exercised by any person entitled to mortgage money.

Express power of sale by reference to statute (e).

2. The mtgee may at any time or times after the sd — day of — next or “the execution of this deed” sell the mtgd premes or any pt throf in like mner as if the statutory power of sale had arisen : AND the provisions of the L. P. Act, 1925, relating to the exercise of the statutory power [except so far as the same are hby varied or extended or “except the provisions restricting the exercise throf contd in section 103 of the sd Act of 1925”] & all the provons of the sd Act with reference to sales effected thrunder shl apply resply to the power of sale hby conferred & to any sale effected thrunder as if such power were the statutory power [PROVD ALWAYS that the power of sale hby conferred shl become exercisable

(e) If the mortgage is subject to prior charges, add, “or such pt throf as shl be pd to him or them.”

(a) See last note.

(b) A mortgagee is entitled to the costs of an abortive sale, see *Farrer v. Lacy Hartland & Co.*, 31 Ch. D. 42.

(c) In the case of a mortgage of a policy of insurance or other chose in action, where the mortgage is to continue for a term, see the provision, *post*, p. 71, note (d).

(d) Where freeholds are mortgaged with personalty, say “as psonal este.” The direction in the text does not render the surplus proceeds realty in equity : *Re Grange*, [1907] 2 Ch. 20.

(e) This form can, if desired, be readily adapted to the appointment of a receiver.

by the mtgee at any time or times after, *continue as in f. 7(f)]*.

Power to
sell for
rent-
charge
(*h*).

3. The statutory (*g*) power of sale shl be extended so as to authorise a sale of the mtged premes or any pt or pts throf in conson of a perpetual rentcharge payable half-yrly to be seed on the ppty comprised in such sale or on any other ppty or partly in conson of such rentcharge & partly in conson of a gross sum of moy & so that such rentcharge shl be substituted as security for the blnce for the time being remang due herundr.

Power to
sell by
tender.

4. THE statutory (*g*) power of sale shl be extended so as to authorise a sale by tender & so that it shl be in the uncontrolled diseron of the pson or psons selling, whether such sale be made by public auction, private contract or tender.

Power to
sell fix-
tures by
valuation
(*hh*).

5. Upon any sale of the premes hby mtged or any part throf under the pwr of sale applicable hto the fixtures and fittings affixed thereto or to such pt throf may be sold at a price to be ascertained by valuen PROVIDED that the sd fixtures and fittings shall not be sold separately or apart from the buildings or land to which the same are annexed.

Clause
varying
statu-
tory
power of
sale.

6. THE mtgee shl not exercise the power of sale applicable hto unless & until, &c., *insert express alternative restrictions* ; & the provons of s. 103 of the Law of Property Act, 1925, shl be varied aceedly, but nothg hrin contd shl affect the statutory provons for the protection of pchasers.

Events
in which
power of
sale shall
be exer-
cisable.

7. THE power of sale applicable hto shl become immedly exercisable by the mtgee witht the necessity of giving any notice in that behalf to the borr, at any time or times after the happening of any or either of the events following, that is to say :—

(*f*) If the alternative of excluding s. 103 of the L. P. Act, 1925, is adopted, the proviso restricting the exercise of the power will be in the form following, viz., “Prov'd always that the mtgee shl not exercise the power of sale hby conferred unless & until, &c.”

(*g*) For an express power, say “The power of sale hby conferred shl extend, &c.”

(*h*) A rentcharge may be created on another rentcharge itself charged on or payable out of land or on or out of the income of land : L. P. Act, 1925, s. 122 (1).

(*hh*) A mortgagee cannot sell fixtures apart from the land, see the cases collected, *post*, p. 175, but the fixtures are included in the property subject to the power of sale : L. P. Act, 1925, ss. 88 (4), 89 (4).

(i) If the borr shl (*k*) become bankrupt (*l*) or have a receiving order made against him or enter into any arrangemt or composition for the benefit of his creditors, *or, if the mortgagor is a company*, "if an order or an effective resolution shl be made for the winding up of the Co except for the ppose of amalgamation or reconstruction" (*m*), or if a receiver shl be apptd of the mtged premes.

On bankruptcy, &c. (*i*).

(ii) If the borrs [or their successors in business] shl, &c., *adapt* (i).

The same in mortgage by firm.

(iii) If the mtged ppty or any pt throf or any chattels thron belonging to the borr other than chattels belonging to any tenant or tenants of the borr or a person not entitled to redeem the mtged premes shl be taken in execution [for leaseholds add, "or if any chattels on the mtged ppty shl be taken under a distress for the rent reserved by the sd lease"].

On execution or distress.

(iv) If the intt seed by the mtge of —, *or* "any prior mtge or incumbrance," shl be in arrear & unpaid for fourteen days after the same shl become due, or if the borr shl fail on demand to produce to the mtgee the receipt for such paymt, or if any proceedings shl be taken by or on behalf of the sd — *or*, "any prior mtgee or incumbrancer" to enforce his seey, or if the sd — *or*, "any such prior mtgee or incumbrancer" or a receiver shl enter into posson of the mtged ppty or any pt throf.

On interest falling in arrear under prior mortgage, &c.

(v) If any instalmt of ppal moys or the intt on any ppal moys for the time being unpd or any pt throf respively shl not be pd within 14 days after the day hby apptd for the paymt throf.

On non-payment of instalments.

(vi) If the borr shl neglect or omit to pform & observe the covts by the lessee & condons contd in the sd lease or to keep the mtgee indemnified against all actions & proceedings,

On breach by mortgagor of

(i) This provision should be inserted where money is advanced for building or other trade purposes.

(*k*) If the security largely depends upon the value of the covenant to pay, add "die or."

(*l*) If the power of sale becomes exercisable solely by reason of the bankruptcy of the mortgagor it cannot be exercised without the leave of the Court: L. P. Act, 1925, s. 110, but the purchaser is not concerned to see that leave has been obtained: s. 104 (2) (*c*).

(*m*) See other special provisions sometimes inserted in the case of mortgages by companies, Palmer, 12th ed., pt. 3, pp. 275, 276.

lessee's covenants (c). costs, damages, expenses, claims, & demands by reason of the non-paymt of the rent reserved by the sd lease or any pt throf, or of the breach, non-pfformance, or non-observe of the sd covts & condons or any of them.

On lease taken by local authority under Small Holdings Act, 1908 (d). (vii) If the mtged premes or any pt throf shl wtht the consent in writing of the mtgee be taken, under compulsory powers vested in any public or local authority by virtue of a statute for the time being in force, on lease for a term of twenty-one yrs or upwards or for a less term with power of renewal.

On decrease in value of mortgaged securities. (viii) If on any day the total value of the ppty comprised in this secy (estimated according to the lowest prices current on the London Stock Exchange & certified by any broker, being a member of such Exchange, nominated by the mtgee) shl not exceed £——.

On one month's default (e). (ix) If default shl be made by the borrs in paymt to the mtgees of the balance owing on the acct current hby seed for one calendar month after such acct current shl be closed.

On non-renewal of policy. (x) If the issuing Office shl decline to renew the sd, *guarantee*, policy.

On determination of suretyship. (xi) If the surety shl give notice to the mtgee determining his suretyship.

In various events on (xii) If the borr shl die or shl break or fail to observe any of the covts or provons on his pt hrin contd or shl give or

(c) Where the mortgagor conveys "as beneficial owner" a covenant is implied by him to pay the rent and observe and perform the lessee's covenants and conditions, and to indemnify the mortgagee against them (L. P. Act, 1925, s. 76 (1) (d) and Second Schedule, Part IV. of that Act), upon breach of which the statutory power of sale becomes exercisable: L. P. Act, 1925, s. 103 (iii). The provision in the text should be inserted in a mortgage by trustees who do not convey "as beneficial owners."

(d) Where land having a prospective value for building, mining or other industrial purposes, is taken on lease by a local authority under the compulsory powers of the Small Holdings, &c. Act, 1908, amended by the Land Settlement (Facilities) Act, 1919, s. 10, the rent must be estimated without regard to the use to which the land taken might otherwise be put (see ss. 7, 23, 46, and the First Schedule (4) of the principal Act, and s. 10 of the amending Act, and will be fixed, therefore, at an amount out of proportion to the true value of the land. The mortgagee should be allowed to call in his money on the land being so taken.

(e) This provision should be inserted in a mortgage to secure an account current: see p. 21, f. 11, and *Berry v. Halifax, &c., Co., Ltd.*, [1901] 1 Ch. 188.

execute a bill of sale over any of his personal chattels or effects or a warrant of attorney to enter up judgment against himself or shall give any promissory note or accept or endorse any bill of exchange (except in the ordinary course of business) or suffer any of his goods to be taken in execution or under a distress for rent, rates, or taxes, or shall without the written consent of the mortgagee be absent from his said business at any one time for more than one week (except on account of illness) or shall cease to carry on the said business on the mortgaged premises or if the takings of his said business in any one week shall be less than £—.

mort-
gage of
business
premises
and good-
will.

8. THE statutory power of sale shall apply to this section but without the restrictions contained in s. 103 of the L. P. Act, 1925, as to giving notice or otherwise, & such power of sale shall become exercisable by the mortgagee at any time or times after the principal monies hereby secured shall have become due, *or for a mortgage on demand*, "after the execution hereof."

Short
form
excluding
L. P.
Act, 1925,
s. 103.

9. THE BORROWER may at any time or times before the [any] power of sale vested in the mortgagee has become exercisable & before the principal monies hereby secured shall have been called in sell any part or parts of the mortgaged premises at the best price that can reasonably be obtained (not being less than a price to be approved of by Messrs. — or some other valuer to be approved of by the mortgagee), & the mortgagee, shall at the cost of the borrower on receipt of the full amount of the purchase-money for the same join in conveying the property sold to the purchaser, & the purchase-money shall be applied as if it had arisen from a sale by the mortgagee.

Power to
mort-
gagor to
sell part
of pro-
perty.

10. THE power of sale conferred on mortgagees by the L. P. Act, 1925, shall not apply to this section.

Exclu-
sion of
statutory
power of
sale.

11. A SALE in lots of any leasehold land hereby mortgaged may be effectuated by an assignment of the whole of the property demised by the lease to one purchaser & by the grant either by the mortgagee or by such purchaser, his executors, administrators, or assigns, to each of the other purchasers of an underlease of the lot purchased by him for the whole term, less one day, at such apportioned rent & subject to such covenants & conditions as may be thought proper.

Power to
sell lease-
holds in
lots by
way of
under-
lease (a).

12. ANY sale made under the statutory power in that behalf

Power to

(a) See Vol. I., p. 326, note (d).

surrender policy (b). of any poly for the time being subjt to this secy may be made by surr to the office grantg the same or orwise.

Addition to statutory power in second mortgage. **13.** A SALE of the mtged premes or any pt throf may be made by the mtgee, either subjt to or dischged from (c) the sd mtge debt of £—— & intt or upon any terms of indemnity against the same wch the mtgee may think fit.

Power to create and sell a rent-charge (d). **14.** THE statutory power of sale shl be extended so as to authorise the mtgee to sell for such price to, & to chge upon the mtged premes or any pt throf in favour of, any pson or psons or a corporon one or more perpetual yrly rent-chges, of such amt, payable at such times, seed by such powers & provons (includg power to take & retain posson of the ppty charged with such rentchge in case of nonpaymt throf or breach of covt as may be agrd upon) [& either subjt to the sd existg rentchge of £—— or with an indemnity agst the same] & to be created in all respects as the mtgee shl think fit, such price to be received & held by the mtgee upon the same trusts as if it had arisen from a sale under the power of sale of the ppty so charged & also to sell the mtged premes or any pt throf subjt to any rentchge or rentchges to be granted under this psnt power.

(b) Where a mortgage is made to the issuing office this clause is unnecessary, as the policy lapses if the premiums are not paid. But in some cases power is given to the Office to cancel the policy and the cancelling is made to operate as a sale under the statutory power at the surrender value which is ratified by the Office at the date of cancellation, the amount of such surrender value being treated as the proceeds of sale.

(c) Where there are several incumbrances, some of which may be annuities, continue from this point as follows :—“all or any pt or pts of the charges & incumbees subjt to wch the sd premes are hby mtged, & in the last-mentd case upon the terms of the same or any of them or any pt or pts throf resply being pd off or pchased out of the pchase-moy of the hds sold or being provd for by paymt into Ct under the statute in that behalf, or upon the terms of any investmts being made [or of any governmt or other life annuity or annuities being pchased] out of such pchase-moys or upon any other terms of indemnity agst the sd charges & incumbees or any of them or any pt or pts throf resply wch the mtgee shl think fit.” See L. P. Act, 1925, s. 50; and as to settled land, S. L. Act, 1925, ss. 69, 82.

(d) This form may be convenient in mortgages of land at Manchester or Liverpool. It may be convenient to limit the rentcharge to the mortgagee for a term with the reversion to the mortgagor.

15. THE provons of section 196 of the L. P. Act, 1925, with respt to notices required or authorised by that Act to be served on mtgors, shl apply to any notices required or authorised by or under this deed to be served on or given to the borr.

Addition to power of sale referring to the L. P. Act 1925, s. 196, as to notices (a).

POWERS OF LEASING (b).

1. THE BORR & the mtgee may from time to time while Express power of

(a) This clause may be added to the express power of sale in lieu of the usual provisions as to notices, the statutory provisions being very full and sufficient in this respect.

(b) The L. P. Act, 1925, s. 99, gives to a mortgagor (not including an incumbrancer deriving title under him: s. 99 (18)) or mortgagee in a mortgage made after the 31st December, 1881, while respectively in possession, power to grant agricultural or occupation leases for 21 years, or in the case of a mortgage made after the 31st December, 1925, for 50 years, and building leases for 99 years, or in the case of a mortgage made after the 31st December, 1925, for 999 years, in every case to take effect not later than 12 months after their date at the best rent, without taking a fine and subject to the restrictions usually inserted in leasing powers. Sub-section (14) of s. 99 allows a mortgagor and mortgagee by agreement in writing whether or not contained in the mortgage deed to confer on each other or on both of them any further or other powers of leasing or having reference to leasing which shall be exercised as far as may be with all the like incidents as attach to the statutory powers, but such further or other powers of leasing shall not prejudicially affect any other existing mortgagee unless the latter concurs in or adopts the agreement. The Act is not to be construed as enabling a mortgagor or mortgagee to lease for any longer term or on any other conditions than could have been granted or imposed by a mortgagor with the consent of all incumbrancers if the Act had not been passed, and a reversion of at least one day must be reserved in leases granted under mortgages of leaseholds: sub-s. (15). Leases granted by a mortgagor in possession are binding on all the incumbrancers (who are bound thereby as though they were parties thereto: *Wilson v. Queen's Club*, [1891] 3 Ch. 522), and those granted by a mortgagee in possession are binding on all incumbrancers and on the mortgagor and all persons interested in the equity of redemption (see sub-ss. 1-9, and the definition of "mortgagor" in sub-s. (18)). In a building lease, a peppercorn rent, or a nominal or other rent less than the ultimate rent may be reserved for the first five years (sub-s. 10). The counterpart of a lease granted by the mortgagor is to be delivered by him to the first mortgagee within a month (sub-s. 11), but the lessee is not bound to see that this is done. The statutory power may be excluded or varied in the mortgage deed or otherwise in writing and shall take effect subject to the provisions of the deed or writing: sub-s. (13); and see *Public Trustee v. Lawrence*, [1912] 1 Ch. 789. After a receiver has been appointed by the mortgagee under the statutory power the leasing powers conferred by the section are exercisable by the mortgagee instead

Provisions of the L. P. Act, 1925, giving leasing powers to mortgagors and mortgagees.

leasing
for 21
years
to be ex-
ercised by
the mort-
gagor or
mort-
gagee

resply in posson (c), demise the whole or any pt or pts of the mtged premes for the time being subjt to this secy (d) for any term not exceedg twenty-one yrs, to take effect in posson, or within ——— calr months (e) from the date of the lease, upon such terms & condons as may be deemed expedient, so nevers that there be reserved in every such lease

of the mortgagor so long as the receiver continues to act, and in like manner as if the mortgagee were in possession : sub-s. (19).

Section 8 (1) provides that a lease or tenancy at a rent for a term of years absolute granted by a mortgagor or mortgagee under a statutory power whether or not extended by any instrument, may be granted in the name and on behalf of the estate owner by the person empowered to grant the same with the same effect and priority as if Part I. of the Act had not been passed.

Statutory
powers of
accepting
surren-
ders.

Section 100 (discussed 56 Sol. J. 250 and 267), gives to the mortgagor and mortgagee respectively while in possession a power to accept a surrender of a lease of the mortgaged land or any part thereof, for the purpose only of granting a new lease of the property surrendered, such new lease being of the nature described in the section. By sub-s. 13 of the same section the powers of accepting surrenders of leases after the appointment of a receiver is vested in the mortgagee on the like terms in all respects as the power of granting leases : sub-s. (13). The power of accepting surrenders applies to all mortgages executed after the 31st of December, 1911, and may by writing between the mortgagor and mortgagee, without prejudices to the rights of any other mortgagee not joining in or adopting the agreement, be made applicable to a mortgage executed before that date : sub-s. (8). The section applies, so far as circumstances admit, to any letting or agreement for letting, whether in writing or not : sub-s. (9) ; and may be varied or extended either in the mortgage deed or not by the mortgagor and mortgagee, but not so as to prejudice other incumbrancers : sub-s. (10).

The definition of "mortgagor" contained in sub-s. (12) is the same as that in s. 99 (18).

Under s. 142, the obligation of the lessor's covenants having reference to the subject matter of the lease is annexed to the legal reversion so far as the mortgagor has power to bind the reversion. There does not appear to be anything in s. 99 to prevent its applying to leaseholds, subject to the restrictions of the superior lease (sub-s. 15). The statutory power authorises a lease of sporting rights, which have been severed, but it is doubtful whether it authorises the creation of an incorporeal right : see *Brown v. Peto*, [1900] 1 Q. B. 346, 2 *ib.* 653. The lease must not include property not in the mortgage : *King v. Bird*, [1909] 1 K. B. 837 ; unless the rent be thereby apportioned. An option to determine the lease before, or to renew it after the determination of the term is valid : *King v. Bird*, *sup.* See further as to these sections, Vol. I., sub-tit. "Leases (Miscellaneous Forms)."

(c) Powers of leasing and management cannot be exercised by the mortgagee to the exclusion of the mortgagor without the former becoming mortgagee in possession, see *Noyes v. Pollock*, 32 Ch. D. 53 ; cf. *Chapman v. Smith*, [1907] 2 Ch. 97, and see *Kirby v. Cowderoy*, [1912] A. C. 599.

(d) If appropriate add "or any rts of sporting over the same."

(e) Twelve calendar months is the period allowed by statute, s. 99 (5).

the best yrly rent or rents to be incident to the reversion that can reasbly be obtained witht taking anything in the nature of a fine or premium (g), & so that there be contd in every such lease a covt by the lessee for paymt of the rent or rents thby reserved, & a condon of re-entry on nonpaymt throf within a time to be thrin specified, not exceedg — days (a) : AND the borr hby covts with the mtgee that the borr will upon any exercise by him of the power of leasing, hrinbfe contd, procure from the lessee a counterpt of the lease duly executed by the lessee : AND will deliver the same to the mtgee within one month (b) after the exon of the lease : AND it is hby agrd that ss. 99 and 100 of the L. P. Act, 1925, shl not apply to this secy (c).

2. THE BORR shl not exercise the statutory powers of leasing or agreeing to lease, or of accepting or agreeing to accept

while
respec-
tively in
posses-
sion (f).

Clause re-
stricting
mort-
gagor's
statutory

(f) The form in the text differs from the statutory provisions in that it does not extend to building leases, and is readily adaptable to minor variations from the statutory power. An express power of leasing practically co-extensive with the statutory power, exercisable by the mortgagor and mortgagee while respectively in possession, is however seldom inserted in the deed, the more usual and convenient practice being to rely upon the statutory provisions so far as they extend, and to supplement those with such provisions as the circumstances of the case may render desirable for the purpose of restricting the power of the mortgagor, or extending the power of the mortgagee; see ff. 2 and 3, *infra*. In some cases, where the mortgage comprises house property or a building estate, it may be desirable to insert, in full, special powers of leasing, entering into contracts for leases, accepting surrenders of leases, laying out roads, &c., and management. In that case the form in the text may be adopted, substituting for the words giving power to demise, power "to exercise over the whole or any pt or pts of the mtged premes for the time being subjt to this secy, the powers following, that is to say, First, a power, &c.," and concluding as in the text, with a covenant by the mortgagor to procure and deliver counterparts, and an agreement to exclude the application of the statutory powers.

(g) The form may be shortened by substituting "at rack rent" for the above words as to rent.

(a) Thirty days is the period allowed by the L. P. Act, 1925, s. 99 (7).

(b) The period allowed by the L. P. Act, 1925, s. 99 (11).

(c) The exclusion of the statutory power without substituting an express power may be to the positive disadvantage of the mortgagee, since if voidable leases are granted, as they frequently would be, without his concurrence, and he is willing to confirm them, he would be in a less favourable position as regards enforcing the lessee's covenants, &c., than if the leases had been validly granted under a power; see an instance in *Towerson v. Jackson*, [1891] 2 Q. B. 484.

power of
leasing,
&c. (e).

Clause
extend-
ing statu-
tory
power of
leasing.
Power to
mort-
gagee to
take im-
mediate
possession, and

a surr of a lease (d), witht the consent in writing of the mtgee wch need not be expressed in such lease or surr or agrmt (f).

3. THE statutory powers of leasing [of the borr & (g)] of the mtgee, in relation to the mtged premes, shl be extended so as to authorise the grting of leases for any term, &c. (h).

4. THE MTGEE may at any time hrafter, whether there shl or shl not have been a default in the paymt of any ppal moys or intt hby seed, & although the same shl not have become due, enter into the posson or rect of the rents (hh) & profits of the

(d) If desired substitute for the rest of this form "while a receiver for the time being shl be entitled to act." These words can seldom be required: see L. P. Act, 1925, ss. 99 (19), 100 (13).

(e) In the absence of any restriction building leases might, in some cases, be granted to speculators unable to complete the buildings, in which case the property might become unsaleable. The form must not be inserted in a mortgage by a tenant for life or a person having the powers of a tenant for life: see S. L. Act, 1925, s. 104.

(f) If desired add "but this restriction shl not apply to leases or agrmts for leases at rack rent granted by the borr while in posson of the mtged hds in accordance with printed forms wch have been signed by the borr & the mtgee for the ppose of identification with the necessary verbal alterations: AND further every such lease or agrmt for lease as is lastly hrinbfementd shl operate as if it were granted under the power conferred on a mtgor in posson by the L. P. Act, 1925.

(g) It is frequently desirable to extend the statutory power of leasing in the case of mortgages of building estates and public-house property. Where the power is extended to the mortgagor it may be prudent to insert f. 2 as a safeguard against any improper exercise of the power.

(h) The following is sometimes useful, e.g. in the case of public-house mortgages:—

Power to
sell fix-
tures,
&c., to
lessee.

"THE BORR may upon or after the grantg of any such lease as afsd, sell & dispose of to the lessee or lessees all or any of the fixtures (being of the descron usually known or regarded as tenant's or trade fixtures) or fittings in or upon the premes comprised in such lease free from the secy hby created, & receive for his or their own use & benefit & give an effectual discharge for the pphase-moy for the same fixtures & fittings."

(hh) A payment by a tenant of rent which has actually become due to a mortgagor before any claim by a mortgagee is valid whether the mortgage be legal or equitable. But a prepayment made subsequent to the date of

mtged premes, or any pt throf, & manage the same (*i*) & may grt or enter into any such leases or agrmts for leases throf as mtgees in posson are by the L. P. Act, 1925, authorised to grt or enter into (*k*), & may accept surrenders of leases & tenancies upon such terms as may be thought pper (*l*), & make allowces to & arrangemts with tenants, and employ such agents or recers to collect the rents of the sd premes, at such salaries or commission as may be thought fit, & expend such moys for repairs, insce (*m*), orwise in relon to the sd premes, as may be deemed expedient, & any moys expended by the mtgee under this provision shl be deemed to be pperly pd by him: AND it is hby agrd that all rents & profits received by the mtgee shl be applied as far as the same will extend in the first place in paymt of all costs & expses incurred by him or them in receivg or recoverg the same or orwise under this secy, & in the next place in dischge of any rents, rates, taxes, expses of repairs, or insce, or other outgoings affectg the mtged premes, & in the next place in paymt of the intt owing on this secy, & the surplus (if any) of such rents & profits may at the option of the mtgee be either applied in reduction of the ppal moys for the time being owing on this secy, or pd into a bank

to manage, grant leases, &c.

Trusts of rents and profits received.

the mortgage is a collateral agreement between the mortgagor and the tenant, and is not binding on the mortgagee: *Lord Ashburton v. Nocton*, [1915] 1 Ch. 274 at pp. 290, 291, *per* SWINFEN EADY, L.J. A prepayment will, however, be good to the amount of rent which becomes actually due before notice has been given to the tenant by the mortgagee, though invalid as to the residue: *Cook v. Guerra*, L. R. 7 C. P. 132.

(*i*) In the absence of express provision to the contrary, a legal mortgagee may enter into possession and receive the rents and profits of the mortgaged property at any time after the execution of the mortgage deed; but the exercise of this right involves the correlative right of the mortgagor to make payment and redeem immediately, without notice or interest in lieu of notice: *Robbins on Mortgages*, 796, and L. P. Act, 1925, s. 95. Occasionally it may be proper to give wider powers to the mortgagee. They may be similar to those in the power to manage real estate during minorities, *post*, sub-tit. Settlements (Real).

(*k*) Where an express power of leasing is used, continue "or as the borrr is hrinbfe authorised to grant or enter into."

(*l*) See also the power given by the L. P. Act, 1925, s. 101 (1) (iv.), to mortgagees in possession to cut and sell timber.

(*m*) In a mortgage of leaseholds say, if applicable, "or in observing & performing the covts by the lessor & condons contd in any lease or tenancy agrmt for the time being affecting the mtged premes or any pt throf."

to the acct of the mtgee, with power for him from time to time to apply the same as if it were rents & profits arising during the current yr (a).

The same adapted to mortgage of buildings let out in flats.

5. IF THE mtge shl enter into posson of the mtged ppty or any pt throf, then—

(i) The mtgee may grant any lease or tenancy agrmt of any pt of the mtged ppty upon such terms & condons as he may think fit with regard to the use by the tenants & others authorised by them of any lifts, radiators, stairs, corridors, lavatories & conveniences on the mtged ppty, & the maintenance, repair & cleansing throf by the lessors, & the provision & supply by the mtgee of water & of means of lighting for the demised premes & other pts of the mtged ppty, & of gas, electricity & other illuminants, & of meters for measuring the amount of gas, electricity & other illuminants so supplied, & with regard to the provon by the mtgee for the benefit of tenants, of housekeepers, caretakers, lift attendants & other servants, & the services to be rendered by them or other psons in cleansing & dusting rooms, & cleaning stairs, corridors & lavatories, & lighting & keeping up fires, cleaning windows & chimneys, & such other services & duties as the mtgee shl think fit in connection with the demised premes or the mtged ppty, & generally with regard to all or any other matters wch the mtgee shl consider to be pper for the use, enjoymt & occupation of the demised premes or the mtged ppty by the tenants throf resply.

(ii) The mtgee may appoint & pay such housekeepers, caretakers, attendants, servants & agents as may be necy or pper for the ppose of maintaining & attending to the lifts & other appliances required for the accommodation of the tenants & occupiers of the mtged ppty, & of providing such attendance for such tenants & occupiers as may be required by the terms of their leases or tenancy agrmts, or as the mtgee may think fit for the ppose of obtaining tenants for the mtged ppty, & generally for maintaining & keeping up the mtged ppty as a block or blocks of flats or offices, & also may incur such expenditure as the mtgee may think fit for repairs & orwise in respect

(a) Any provision that the mortgagee, while in possession, shall only be liable for money actually received by him and for involuntary losses is invalid: *Lord Kensington v. Bouverie*, 7 De G. M. & G. at p. 157; *Mayer v. Murray*, 8 Ch. D. at p. 428. As to what amounts to taking possession, see *Kirby v. Cowderoy*, [1912] A. C. 599, and see *ante*, p. 64, note (c).

of or in relation to the lifts, staircases, corridors, lavatories & roofs of the mtged ppty & all other pts throf, for the repair of wch the tenants of the sd premes shal not for the time being be liable.

(iii) The mtgee may expend such sums as he shl think fit in insuring agst all or any liabilities for damage or injury wch may happen or be occasioned to any pson or psons while using, going upon, or being in or upon any of the lifts, staircases, corridors, lavatories or roofs of the mtged hds, or against any liabilities that they may incur under the Employer's Liability Act, 1880, or the Workmen's Compensation Acts, 1906 to 1923, or any amendmt throf resply, & all moys by the mtgee under this provon shl be deemed to be pperly pd by him.

(iv) *Trust of rents & profits received*, p. 67.

MISCELLANEOUS CLAUSES.

1. THE SD, *assnor*, or "borr," hby irrevocably empowers the sd, *assnee*, or "mtgee" to demand, sue for, recover, receive, & give valid receipts for the sd sum of £——, *the ppal*, & all intt [due &] to become due for the same, in the name of the sd, *assnor*, or "borr," & for the pposes afsd, or any of them to

Power of attorney in assign-ment of debt or chose in action (b).

(b) The effect of section 136 of the L. P. Act, 1925, re-enacting section 25, sub-s. 6 of the Judicature Act, 1873, making a chose in action assignable, where the assignment is "absolute . . . (not purporting to be by way of charge only)," and express notice of the assignment is given to the debtor improves the position of an assignee of a legal chose in action by enabling him to sue at law in his own name as assignee without regard to the question whether or not the assignment was made for valuable consideration: *Re Westerton*, [1919], 2 Ch. 104. The section has been held to apply to an assignment upon trust to receive the money, and after payment thereof of a sum owing to the assignee to pay the surplus to the assignor, or to an assignment with a proviso for redemption: *Burlinson v. Hall*, 12 Q. B. D. 347; *Tancred v. Delagoa Bay, &c., Co.*, 23 Q. B. D. 239; *Durham v. Robertson*, [1898] 1 Q. B. 765; and see *Hughes v. Pump House Hotel Co.*, [1902] 2 K. B. 190; *Torkington v. Magee*, [1903] 1 K. B. 644; or even to an assignment upon trust for the assignor during his life and after his death on other trusts: *Walker v. Bradford Old Bank*, 12 Q. B. D. 511; or upon trust to hold the proceeds of the chose in action for the assignor absolutely: *Comfort v. Betts*, [1891] 1 Q. B. 737; *Fitzroy v. Cave*, [1905] 2 K. B. 364. After the assignment has been notified as provided by the sub-section, the assignee is not affected by any debt thereafter incurred by the assignor in respect of property subject to the assignment: *Re Pain*, [1919] 1 Ch. 38. The sub-section does not apply to an assignment of an undefined part of a debt (*Jones v. Humphreys*, [1902] 1 K. B. 10) nor of a defined part (*Forster v.*

As to inserting power of attorney in mortgage of chose in action.

execute & do all such instrumts & things as shl be deemed necy or expedient.

Receipt clause in mortgage of policy or reversionary interest (a).

2. THE RECT of the mtgee for any moys [stks, funds, shares, or secs, or other psonal este] pd to him in respt of the sd poly or "reversionary intt" hby mtged, shl effectually dischge the assuree socy, or "trees or tree," or psons or pson payg the same thrfrom, & from being concerned to see to the applicon or being answerable for the loss or misapplicon throf; & the assuree socy, or "trees or tree," or psons or pson, paying the same, shl not be bound or concerned to enquire whether any default has been made in paymt of any ppal moys or intt hby seed, or whether any moy remains owing on this secy, or orwise as to the propriety of such paymt as afsd.

Baker, [1910] 2 K. B. 636; *Conlan v. Carlow C. C.*, [1912] 2 Ir. R. 535; *Re Steel Wing Co.*, [1921] 1 Ch. 349, not following *Skipper v. Holloway*, [1910] 2 K. B. 630. Such an assignment operates to make the assignee a creditor in equity only of the original debtor, in which case and also where it is difficult to give immediate notice to the debtor the form in the text should be inserted. Nor does it apply to an assignment of a future debt: *Wigan v. English and Scottish, &c., Association*, [1909] 1 Ch. 291; *Glegg v. Bromley*, [1912] 3 K. B. 474; *Hambleton v. Brown*, [1917] 2 K. B. 93; and see *post*, p. 159. The case of policies is distinct, as they are made legally assignable by the Policies of Assurance Act, 1867, on notice being given to the office; see *Withers on Reversions*, 181. As to the effect of a condition in a policy against assignment, see *Re Turcan*, 40 Ch. D. 5.

A power of attorney given for valuable consideration may be made irrevocable under the L. P. Act, 1925, s. 126; see Vol. I., p. 205.

Power for mortgagee to give receipts, &c., under L. P. Act, 1925.

(a) The L. P. Act, 1925, s. 107, makes the receipt of a mortgagee who has a power of sale under the Act (*i.e.* a mortgagee whose mortgage is made by deed after 1881) a sufficient discharge for any money or securities (including stocks, funds and shares, see s. 205 (xxv) comprised in or arising under his mortgage, and the person transferring the same is not concerned to enquire whether any money remains due under the mortgage; and the money received under the mortgage or from the proceeds of the securities (after payment of the costs of recovering and receiving and converting the same) is applicable in the same manner as the proceeds of a sale under the statutory power in s. 101. The power of selling securities received by the mortgagee under his mortgage is not expressly given by s. 126, being left to depend on the general power of sale in s. 101, as to which see p. 51, note. These statutory provisions, unless it is desired in any way to vary them, appear to cover everything contained in ff. 2 and 4 in the text, which may therefore in general be omitted; but where the loan is to continue for a term of years, some provision may be required for the event of a policy or reversion falling in before the expiration of the term; for form, see p. 71, f. 4 and note. The section protects trustees who pay to a mortgagee moneys representing all the interest mortgaged, but does not render it incumbent on them to pay more than is due to him: *Re Bell*, [1896] 1 Ch. 1; *Hockey v. Western*, [1898] 1 Ch. 350.

3. THE RECT of any of the cashiers of the sd bank for any ppal moys or intt hby seed, or for any moys arisg from a sale of the mtged premes or any pt throf [or any moys, stks, funds, or secs, comprised in or arisg under this secy], shl effectually dischge the pson or psons [or Co] payg or transferrg the same thfrom, & from being concerned to see to the applicon throf, whether any moy remains owing on this secy or not. *For a mortgage on demand to a private bank say, "And a statutory declaron made by any pson who shl thrin state that he is a ptner, manager, or cashier of the sd bank, & that the moys hby seed belong to the pson or psons who shl at the time of such demand being made carry on either alone or in ptnership the business of bankers under the firm name of D & Co shl be conclusive evidence of the facts stated in such declaron."*

Receipt
clause in
mortgage
to bank.

4. IF THE mtgee shl receive any moys in respt of the poly (c) hby mtged, he shl apply the same in the first place in or towards paymt or dischge of all costs & expses incurred in obtaing paymt of & receivg the same, or in or about the execution of the trusts or powers of this deed or orwise in relation to the premes : AND in the next place in or towards satisfon of the moys for the time being owing on this secy (d), AND shl pay the surplus (if any) throf to the borr.

Trusts of
money
received
in respect
of policy
or rever-
sionary
interest
(b).

5. THE SD, *solor mtgee*, shl be entitled to make & receive all

Power to
solicitor

(b) See note (a) on last page.

(c) For a reversionary interest, say, "shl receive any moys, stks, funds, shares or secs in respt of the mtged premes, he shl by & out of the same, or the proceeds of the sale (wch he are hby authorised to effect) throf, in the first place, reimburse to himself all costs & expses incurred in obtaing paymt or transfer of, & receivg & convertg the same," &c. ; and subsequently after "pay," add "or transfer."

Variation
for rever-
sionary
interest.

(d) Where the mortgage is to continue for a term of years proceed as follows :—"with full power to retain in hand a sufft sum or fund to provide for the ultimate satisfon of any moys hby seed wch shl not for the time being be immedly payable, & to apply the same acedly (any fund so retained if not already invested to be invested in Government stks or securities & to accumulate at compound intt until the same shl be required for the ppose afsd) & then to pay or transfer the surplus (if any) of the sd moys & premes (includg the ultimate surplus of any such accumulated fund as afsd) to the borr."

Vari-
ations
where
mortgago
is for a
term.

mort-
gagee to
charge
(a).

such chges & emolumts for business (whether of an ordinary or strictly professional character or not) done by him or his firm in relation to any sale or other matter affectg the mtged premes under any of the powers or provons hrin contd, or any statutory power, or orwise, as he wd have been entitled to make & receive in respt of such business if he had not been a mtgee hrunder, & to charge agst the borr, all such costs, charges & expses, as wd have been chargeable agst him or them as mtgee's costs, if the mtgee had employed another pson to act as his solor in respt of this seey.

Charges
under
Agric.
Holdings
Act,
1923,
in favour
of land-
lord to be
trans-
ferred to
mort-
gagee (b).

6. IF AT any time or times during the continuance of this security the borr or his assns shl obtain an order from the Ministry (aa) of Agriculture & Fisheries under the Agric. Holdings Act, 1923, charging a holding or any pt throf (being pt of the mtged premes) with the paymt of a sum of moy & intt, the borr shl forthwith at his or their own cost register the same under the Lands Charges Act, 1925, & transfer such charge & deliver the instrumt of charge to the mtgee, & in the

Profit
costs of
solicitor
mort-
gagee.

(a) A solicitor mortgagee could not formerly in the absence of express contract charge profit costs of preparing a mortgage from his client to himself (*Eyre v. Wynn-Mackenzie*, [1894] 1 Ch. 218; *Cheese v. Keen*, [1908] 1 Ch. 245), but the Mortgagees' Legal Costs Act, 1895, authorises a solicitor to whom either alone or jointly with any other person a mortgage is made, or his firm, to receive the same costs for work done in respect to the mortgage, as if the mortgage had been made to a stranger who had employed the solicitor or his firm to transact the business, and in case a mortgage is made or transferred to him, or to him jointly with another person, to charge against the security the same costs as if the mortgage had been made and remained vested in a person who was not a solicitor who had employed him or his firm to do any business with respect to the mortgage or the property comprised therein. On the construction of the Act, see *Eyre v. Wynn-Mackenzie*, [1896] 1 Ch. 135; *Day v. Kelland*, [1900] 2 Ch. 745; *Re Norris*, [1902] 1 Ch. 741.

Solicitor
trustee.

The Act, however, does not apply to a solicitor-trustee, who can in the absence of express contract charge profit costs only where he is acting in litigation for himself and his co-trustees; *Cradock v. Piper*, 1 Mac. & G. 664; *Re Corsellis*, 34 Ch. D. 675; and see *post*, p. 186, note (b).

(aa) See the Ministry of Agriculture and Fisheries Act, 1919.

(b) A landlord paying compensation to a tenant for an improvement comprised in the first schedule to the Agric. Holdings Act, 1923, or expending (after the prescribed notice) such amount as may be necessary to execute an improvement comprised in part 2 of the schedule to the Act can obtain an order from the Ministry of Agriculture and Fisheries charging the holding with the repayment of the amount paid (s. 20 of the Act), but the charge, which must be in the statutory form, must be registered (s. 20 (7) of the Act) under the Land Charges Act, 1925.

meantime the borrr will hold such charge In trust for the mtgee subjt to the right of redmon for the time being existing hrunder.

7. THE MTGEE may while in posson or while a receiver shl be in posson pay any compenson or costs to wch the tenant or occupier of a holding may become entitled under the Agric. Holdings Act, 1923, or under custom or agrmt, & all moys so pd & the costs incurred by him in ascertaining the amount of such compenson & costs shl be deemed to be properly pd & incurred by him.

Power to mort-gagee to pay compensation under Agric. Holdings Act, 1923 (c).

8. THE MTGEE shl at all times durg the continue of this seey have (in addition to the powers by law given to mtgees) the following powers, that is to say, *adapt the appropriate forms arranged in paragraphs, and conclude with f. 11, p. 74.*

General clause giving powers to mort-gagee (d). Provision as to changes in firm (e).

9. THIS SECY shl not be affected by reason of, or "this deed is intd to be a continuing seey for the moys or balce from time to time owing from [to] the sd firm of X. and Co, as hrinbfe provd, notwg," any change in the sd firm of X. & Co, by the death or retiremt of any member or members, or the introdon of any new member or members, or any change in the style or title of such firm.

10. All consents, requests or directions required or authorised by this deed or any deed appointing a receiver of the rents & profits of the mtged premes or by any statute to be given by the Co shl if signed on behalf of the Co by their secretary

Consents, &c., of company, how to be given (f).

There are special provisions in the Agric. Holdings Act, 1923, as to compensation where the tenancy is not binding on the mortgagee (s. 15), and for the cases of an infant or lunatic (s. 38), a woman married before 1883 (s. 39) and a trustee (s. 41).

Where a trustee landlord neglects or fails to pay compensation for one month after it has become due, the tenant can obtain a charge on the holding for the amount from the Ministry, together with the costs incurred in getting it (s. 41).

(c) The mortgagee, if he pays the compensation, and if he does not, then the tenant or occupier, can obtain a charge on the holding for the amount and the costs of getting it from the Ministry (ss. 15 (3), 41).

If this form and f. 11, p. 74, are used, the moneys paid by the mortgagee become a debt from the mortgagor and become charged on the holding without an order of the Ministry. Section 15 provides for the case of a contract for tenancy which is not binding on the mortgagee.

(d) If several powers are given to the mortgagee this form may prove useful.

(e) As to this clause, see 2 Dav. Prec., 4th ed., pt. 2, p. 372, note.

(f) See L. P. Act, 1925, s. 74 (2).

or general manager for the time being be as effectual & valid as if the seal of the Co had been affixed thereto.

Charge of mortgagee's expenses with interest (a).

11. ALL costs, charges & expses pperly incurred hrunder by the mtgee & all moys pperly pd by the mtgee shl togr with intt thron at the rate hrinr mentd be charged on the ppty for the time being subjt to this secy (b), & shl on the same being pd be repaid on demand to the mtgee by the borr with intt thron from the time of paymt at the rate of £—— p.c. p.a., & until such demand shl be made & complied with the borr shl in pt paymt of such intt pay to the mtgee intt at the rate afsd on the moys so pd & for the time being not yet repaid on the respective days hrinbfe apptd for paymt of intt on the sd ppal sum of £——. **PROVD THAT** the charge hby conferred shl be in addition & witht prejudice to any & every other remedy, lien or security wch the mtgee may or but for the sd charge wd have for the moys thereby seed or any pt throf.

Mortgagee's indemnity (c).

12. THE MTGEE shl not be answerable for any involuntary losses wch may happen in or about the exercise or execution of the power of sale or any of the powers or trusts wch may be vested in him by virtue of this deed or any statute.

Clause preserving right of consolidation (d).

13. THE RESTRON on the rt of consolidatg mtge securities wch is contd in section 93 of the L. P Act, 1925, shl not apply to this secy.

(a) This provision is not usually applicable where compound interest is to be paid. See the manner of charging expenses in that case, *Prec. XXIII., post*, p. 128. The clause should be used if any clause authorising the mortgagee to expend money does not contain similar provisions; but see *Lord Suffield v. I. R. Commrs.*, [1908] 1 K. B. at p. 886. As to what costs carry interest, see *Eardley v. Knight*, 41 Ch. D. 537. The costs of the mortgage itself should be deducted from the money advanced: *Wales v. Carr*, [1902] 1 Ch. 860: *Re Foster*, [1920] 3 K. B. 306, at p. 317, and see *post*, p. 267.

(b) For a mortgage by trustees say, "at the rate of £—— p.c. p.a.," and omit the rest of the clause except the final proviso.

(c) The L. P. Act, 1925, s. 106 (3), confers this indemnity where the mortgage is made by deed; but the form may be of use for mortgages under hand.

Consolidation of mortgages.

(d) See *Fisher*, 6th ed., 617. The clause in the text is not inserted for general use, but occasionally, where (as in the case of builders) there is a likelihood of several mortgage transactions occurring between the same parties, its insertion may be proper. The right of consolidation is abolished, where either or both of the mortgages is made since 1882, by the L. P. Act, 1925, s. 93, but only if a contrary intention is not expressed in the mortgages or one of them; *Re Salmon*, [1903] 1 K. B. 147; so that the right may be created by express declaration: see *Farmer v. Pitt*, [1902] 1 Ch. 954, at p. 960. In cases not falling within the Act, where A. mortgages Blackacre to

14. IN THIS deed where the context so requires or admits the expression "successors in business" in relation to the borr[s] shl include any pson or psons or corporation for the time being entitled to the goodwill & carrying on the sd business of — [on the mtged premes] jointly with or in succession to the borr[s or either of them].

Interpretation of "successors in business" (e).

15. IN THIS deed where the context so requires or admits the expression "successors in business" in relation to the borrs shl include any one or more of the borrs who shl for the time being either alone or in ptnership carry on the sd business of — (b) under the firm name of A. & Co., & his or their ptnr or ptners for the time being in the sd business.

The same, limited to the case of one original member of a firm continuing (e).

ATTORNMENT—DISTRESS.

1. THE BORR hby attorns & becomes tenant from yr to yr to the mtgee of such pt or pts of the mtged premes as are in the

Attornment clause (c).

B. and Whiteacre to C., any person acquiring both mortgages can consolidate unless the equaity of redemption in Blackacre and Whiteacre is vested in or charged in favour of different persons at the time when both mortgages become vested in the same person: *Minter v. Carr*, [1894] 2 Ch. 321; 3 Ch. 498; *Pledge v. Carr*, [1894] 2 Ch. 328; affd. *sub nom. Pledge v. White*, [1896] A. C. 187; but no right to consolidate can arise against the assignee of the equities of redemption of several mortgages effected by different mortgagors: *Sharp v. Rickards*, [1909] 1 Ch. 109. As to the risk to purchasers of the existence of the right of consolidation, see Vol. I., sub-tit. Conveyances on Sale.

(e) This form is intended to be used in connection with ff. 6, 3, 8, *ante*, pp. 18, 26, 33. It should be observed that the persons included in this definition of successors in business are not necessarily "assigns" of the mortgaged property who might be mere lessees, &c., even subsequent incumbrancers, and not therefore within the class of persons to whom it would be contemplated that further advances should be made. On the other hand, it may usually be assumed that the persons carrying on business in succession to the mortgagee are also his assigns of the mortgage debt.

(b) Where more than one business is carried on by the firm say "the entirety of the sd business": see *Eaton v. Western*, 9 Q. B. D. at p. 636.

(c) Owing to the provisions of the Bills of Sale Acts an attornment clause (*Re Willis*, 21 Q. B. D. 384) or a power of distress (*Pulbrook v. Ashby*, 56 L. J. Q. B. 376; *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373) is, except in mining leases, inoperative to enable a mortgagee to recover rent by distress. The Acts prohibit the power of distress unless the instrument

occupation of the borr at the yrly rent of £—— (d) to be pd by eql half-yrly or “quarterly” paymts on the respective days hrinbfe appointed for paymt of intt under this secy, [such rent to be applied in or towards satisfon of such intt & any surplus throf in or towards satisfon of the ppal moys for the time being owing on this secy,] but not to be recoverable by distress (e): PROVD THAT the mtgee may at any time on giving seven days’ notice in writing to the borr determine the tenancy hby created or without giving any previous notice may enter into & upon & take posson of the sd premes, whrof the

creating the power is registered as a Bill of Sale, but do not affect the relationship of landlord and tenant created by the attornment; *Mumford v. Collier*, 25 Q. B. D. 279. Even where the attornment is coupled with a power of distress, the Acts do not avoid it *ab initio* as in the case of other bills of sale which do not comply with the statutory form, but only render registration necessary: *Green v. Marsh*, [1892] 2 Q. B. 330. The primary object of inserting an attornment clause in a mortgage is to enable a mortgagee summarily to evict a mortgagor who remains in possession, and this result can be obtained by resorting to the procedure authorised by R. S. C. Order 3, r. 6, and Order 14, r. 1; *Kemp v. Lester*, [1896] 2 Q. B. 162; *Pilkington v. Power*, [1910] 2 Ir. R. 194. An attornment by a mortgagor to a second mortgagee is valid notwithstanding the fact that the mortgagor has already attorned to the first mortgagee of the same property: *Ex p. Punnett*, 16 Ch. D. 226. On the death of the mortgagor the tenancy created by the attornment is determined: *Scobie v. Collins*, [1895] 1 Q. B. 375.

(d) Or say “one peppercorn if demanded.” In this case the direction in the text as to time of payment, or if, as is usual, a mere nominal consideration is inserted the words in brackets, will be omitted. In the excepted cases to which the Acts do not apply, *i.e.* debentures of companies (see Bills of Sale Act, 1882, s. 17, and *post*, p. 170), and property situated abroad, a substantial rent may be reserved: see *Ex p. Williams*, 7 Ch. D. 138; *Re Stockton, &c., Co.*, 10 Ch. D. 335; *Ex p. Jackson*, 14 Ch. D. 725; *Ex p. Punnett*, 16 Ch. D. 226; *Ex p. Voisey*, 21 Ch. D. 442 (which show that the rent may be in excess of the interest provided it is the fair value and not fictitious). As to applying the proceeds of a distress in discharge of principal, see *Ex p. Harrison*, 18 Ch. D. 127; and as to the relative rights of mortgagor and mortgagee with regard to possession, and the payment of an occupation rent by a mortgagor in possession to a receiver appointed in a foreclosure action, see *Yorkshire Banking Co. v. Mullan*, 35 Ch. D. 125. See further 34 Sol. J. 704, 716.

(e) It was held in *Davies v. Rees* (17 Q. B. D. 408; and see *Hall v. Whiteman*, [1912] 1 K. B. 683) that the Bills of Sale Act, 1882, s. 9 (avoiding bills of sale not in the statutory form), avoids not only the charge on personal chattels, but also the covenant for payment. It is therefore proper where, as is commonly the case, the clause is inserted with the sole object of taking advantage of the R. S. C. for recovery of possession, to add the words in the text negating the right to distrain.

borr has attorned tenant as aisd, & determine the tenancy created by such attornmt: & that neither the recd of the sd rent nor the tenancy created by the sd attornmt shl render the mtgee liable to acct as mtgees in posson (a).

2. WHENEVER any intt payable under this seey shl be in arrear & unpd for — days after the day hby apptd for paymt throf, the mtgee may enter into & upon the mtged premes, or such pt or pts throf as are now or shl from time to time durg the continue of this seey be in the occupon of the borr, or any pt throf, & may distrain for the intt so in arrear & unpaid, & for all costs & expenses occasioned by the non-paymt throf (includg the costs of distress), & may dispose of the distress & distresses then & there found in due course of law, as landlords may do for rent reserved upon leases, to the intent that the sd arrears of intt, costs and expenses may thby be satisfied.

Power of
distress
for in-
terest (b).

APPOINTMENT OF RECEIVER.

1. [AND IT IS HBY AGREED AND DECLARED as follows]:

Appoint-
ment of
receiver.

(i) The borr, with the concurrence of the mtgee, hby appts the recer to be recer, agent, & atty, from time to time, in the name of the borr, or orwise to rece the rents & profits of the mtged ppty [if the apptmt of the recer is by a septe deed, say "of the ppty mentd in the schdle lto"], from the psnt & future tenants

Full form
applic-
able to
freeholds
and
lease-
holds (c).

(a) It has been held in *Stanley v. Grundy*, 22 Ch. D. 478, that an attornment clause by itself does not put a mortgagee in possession, though there are dicta of JAMES and BRAMWELL, L.JJ., in *Re Stockton Iron Furnace Co.*, 10 Ch. D. at pp. 356, 357, and of KAY, L.J., in *Green v. Marsh*, [1892] 2 Q. B. at p. 336, to the contrary.

Statutory
power of
appoint-
ing re-
ceivers.

(b) See notes (d) and (e) on p. 76.

(c) By the L. P. Act, 1925, s. 101 (1) (iii.), a mortgagee, where the mortgage is made by deed, is empowered (to the like extent as if the power had been in terms conferred by the mortgage deed, but not further), when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property (whether real or personal) or any part thereof. By s. 109 (1) the appointment is not to be made until the mortgagee is entitled to exercise the power of sale conferred by the Act; but this provision, no less than the provisions restricting the exercise by the mortgagee of the statutory power of sale, may be varied or extended, s. 101 (3).

& occupiers thereof & the persons liable to pay the same reply, & in case of the non-payment thereof to use all or any lawful remedies

Section 101 (1) (iii) permits a mortgagee to appoint a receiver of an interest in income or of a rent charge or other annual or periodical sum if the mortgaged property consists thereof, and s. 109 (3) gives the receiver power to recover any such interest by action distress or otherwise. A person paying money to a receiver is not concerned to enquire whether any case has happened authorising him to act, s. 109 (4), and sub-s. (5) of the same section provides for the removal of a receiver and a new appointment in writing by the mortgagee. Sub-sections (6) to (8) of the same section deal with the remuneration of a receiver, the insurance of the mortgaged property by him if so directed by the mortgagee, and the application by him of the money he received. A mortgagee cannot under either the statutory or an express power exercisable by reason of the mortgagor's bankruptcy exercise his power to appoint a receiver by reason of the bankruptcy alone without the leave of the Court: s. 110. Where the provisions of the Act regulating the exercise by the mortgagee of the statutory power of sale are varied or extended, s. 109 (1) will operate, without the necessity of any further express provision, to apply the same variation or extensions to the statutory power to appoint a receiver. The statutory power to appoint a receiver appears therefore to be adequate and sufficient for ordinary cases, where the statutory power of sale (whether varied or extended or not) is relied on, and supersedes in general the necessity of appointing or providing for the appointment of a receiver in the mortgage or by a separate deed. The statutory provisions relative to receivers may be incorporated so as to apply to a case where, as in the form in the text, a specified person is agreed upon as receiver, see f. 2, p. 82. Where, however, the circumstances are such as to render it undesirable to rely upon the statutory power of sale, it will generally be desirable to insert an express power to appoint a receiver either in substitution for a receiver appointed upon the execution of the mortgage or independently of any such appointment. In the latter case the express power may conveniently be included in the express power of sale. As to repairs by a receiver, see *White v. Metcalfe*, [1903] 2 Ch. 567. As to the liability of a receiver as agent, where appointed under a power, see *Owen & Co. v. Cronk*, [1895] 1 Q. B. 265; and see *Re Levi & Co.*, [1919] 1 Ch. at pp. 422, 423; and as principal where appointed by the Court, *Burt v. Bull*, [1895] 1 Q. B. 276; and see *Hand v. Blow*, [1901] 2 Ch. 721; *Plumpton v. Burkinshaw*, [1908] 2 K. B. 572; *Re E.G.*, [1914] 1 Ch. 927. As to the appointment of a receiver by the Court on the application of a legal mortgagee in possession, see *Tillett v. Nixon*, 25 Ch. D. 238; *Mason v. Westoby*, 32 Ch. D. 206; *Re Prytherch*, 42 Ch. D. 590. An interim receiver may be appointed by the Court while the mortgagor is still in possession: *Pratchett v. Drew*, [1924] 1 Ch. 280. A receiver appointed by the Court cannot be empowered to carry on the mortgagor's business unless it is expressly (*Whitley v. Challis*, [1892] 1 Ch. 64) or impliedly (*County of Gloucester Bank v. Rudry Merthyr, &c. Co.*, [1895] 1 Ch. 629) included in the security: *Stamford, &c., Co. v. Keeble*, [1913] 2 Ch. 96. A receiver appointed by the Court on the application of a second mortgagee in an action to which the first mortgagee is not a party, is entitled to the rents of the mortgaged property in priority to a receiver already appointed by the first mortgagee under the statutory

for recoverg & obtaing paymt of the same, & to do all things necy or pper for recoverg & receivg the same as fully & effectually as the borr could do :

(ii) The borr hby directs the psnt & future tenants & occupiers of the sd premes resp'y, & the psons liable to pay the same resp'y, to pay the rents & profits of the sd premes unto the recer, & to any future recer to be apptd as hrinar mentd & hby declares that the rect of the recer shl be an effectual discharge to such tenants, occupiers, & psons for such rents & profits :

Direction to tenants.

Receiver's receipt to be a discharge.

(iii) The borr, with the concurrence of the mtgee, hby authorises the recer to make such allowces to & arrangemts with such tenants, occupiers, & other psons as he shl think fit, [& to give notices to quit, & bring, & take actions or proceedings for ejectmt or recovery of posson of any of the sd premes on the expiron or determinon or forfeiture of any tenancy or orwise, & to relet th sd premes, or any pt throf from time to time to such pson or psons as he shl think fit, on yrly, monthly, or weekly tenancies, at the best rents wch may be reasonably obtainable (a) :]

Power to make allowances.

(iv) The recer shl by & out of the rents & profits (b) received by him in the first place pay all ground rents, rates, taxes, charges, assessm'ts, & outgoings, for the time being payable in respt of the sd premes, & wch shl not be orwise pd, & the expense of repairg or insurg agst loss or damage by fire any bldgs or other ppty accdg to the covts in the sd respective leases, or wch he may orwise think fit to repair or insure. *If there are any prior charges, add, " & keep down the intt on all ppal moys, & the yrly sums (if any) for the time being charged upon or payable out of the sd premes, or any pt or pts throf, & having priority over the moys for the time being due on this secy [the sd mtge of, &c.], & wch intt & yrly sums resp'y shl not be orwise pd, but so nevertheless as not to give the same resp'y*

Trusts of rents received.

power until the latter also applies to the Court: *Re Metropolitan, &c., Estates*, [1912] 2 Ch. 497.

A receiver is generally appointed by a separate deed, in order that it may be delivered to him if he is called upon to act; see *post*, p. 262.

(a) The L. P. Act, 1925, ss. 99 (19), 100 (13), confers the powers in this bracket on the mortgagee, but there appears no objection to giving them to the receiver.

(b) In a mortgage of a timber estate continue " & proceeds of sales of timber & underwood."

Provi-
sion
as to sur-
plus
rents.

any further or other secy than they resply already possess"; & in the next place pay all moys payable & all costs, charges, & expses pperly incurred by him in the execution of the powers & authorities hby conferred on him; & in the next place deduct & retain for his own use so much, not exceedg £5 for every £100 reced, as in the opinion of the mtgee the recer shl be reasonably entitled to for his trouble & expenses; & in the next place pay to the mtgee by eql half-yrly, or, "qtrly," paymts on the — day of —, &c., the intt (c) from time to time accruing due on this secy [the sd indre of, &c.], & all ppal moys charged on the mtged premes & payable to the mtgee on demand & the intt due thron & pay the premiums or other moys payable for keeping on foot any poly or pols of assuree for the time being subjt to this [the sd] secy, with power to pay such premiums or moys in priority, if so required by the mtgee, to such intt & other moys, & pay the surplus (d) (if any) of the sd rents & profits unto the borr; PROVD ALWAYS, that the recer shl, if required by the mtgee, from time to time, pay such surplus or any pt throf into the — Bank, at —, or some other bank to be approved of by him or them, as a fund to provide for the intt then next accruing due to him, under this [the afsd] secy & any other paymts hrinbfe authorised or required to be made weh may become payable in the meantime other than the paymt to the borr, & shl also (if required as afsd) from time to time retain such a sum in the sd Bank as shl be deemed pper for the ppose of keepg the acct open, & shl if required by the mtgee, at any time after the power of sale applicable hto [the sd mtgee of, &c.] shl have become exercisable, from time to time pay such surplus, or any pt throf, to him, in reduction of the ppal sum for the time being owing on this [the afsd] secy :

Covenant
by re-
ceiver.

(v) THE recer hby covts with the mtgee, & also as a separate covt with the borr that he the recer will, so long as he shl be recer of the sd rents & profits, use his utmost endeavours to collect & receive the same in mner afsd :

(c) The receiver being the agent of the mortgagor cannot pay arrears of interest on the mortgage which have become statute barred, nor, if he pays over the rents and profits to the mortgagee, can the latter appropriate them towards payment off of such arrears: *Hibernian Bank v. Yourell* (No 2), [1919] 1 Ir. R. 310.

(d) See L. P. Act, 1925, s. 109 (8) (v).

(vi) THE borr hby covts with the mtgee as follows that is to say :

Covenant by mortgagor not to obstruct, or revoke power without consent.

(a) That the borr will not during the continue of this [the afsd] seey obstruct the receiver in the execution of the trusts & powers hby conferred in recovering or receiving any of the sd rents & profits or in the exercise or pformance of any of his powers & duties under this deed or witht the written consent of the mtgee revoke the powers or authorities hby conferred on such recer :

(b) That if the recer shl die or be disqualified to receive the sd rents & profits, or shl resign his apptmt or refuse or neglect to pform the duties hby imposed on him, or shl misbehave himself whilst any moys shl remain owing on this [the afsd] seey, then & in any of such cases, except the death or resignation of the recer, the borr will join with the mtgee in removg the recer from the sd employmt, & will in any of such cases appt such other fit pson in the place of the recer so dying or being removed or resigng as the mtgee shl nominate to receive & apply the sd rents & profits in mnner afsd :

To concur in appointment of new receiver.

(c) That if the borr shl refuse or neglect so to do within one calr month after being required in that behalf in writing by the mtgee, or if the borr shl from any cause be unable so to do, then the mtgee may remove the recer, & appt some fit pson to receive & apply the sd rents & profits in mnner afsd :

Power for mortgagor to appoint on mortgagor's refusal.

(vii) PROVD ALWAYS that the recer shl be deemed to be in all respts the agent of the borr, & that the mtgee or his assns shl be answerable for any loss or misapplicon of the sd rents & profits, or any pt throf, by reason of any default, neglect, or breach of trust, of or by the sd recer for the time being, or for any other costs loss or damage occasd by the acts or defaults of the recer, but that such costs, loss, misapplicon, & damage, & every recer's salary, shl be wholly borne & pd by the borr :

Mortgagee not to be liable for default of receiver (a).

(viii) PROVD ALSO, that the recer shl not act in the execution of the trusts or powers hrinbfe contd, unless & until the power of sale applicable hto [the sd mtge of, &c.] shl have become exercisable :

Receiver not to act until power of sale becomes exercisable.

(a) As to the effect of the omission of this clause, see *Re Vimbos, Ltd.*, [1900] 1 Ch. 470; *Robinson, &c., Co. v. Chic, Ltd.*, [1905] 2 Ch. 123; *Dejes v. Wood*, [1911] 1 K. B. 806; *Cully v. Parsons*, [1923] 2 Ch. 512.

(ix) **PROVD ALSO**, that no tenant or other pson payg moy to, or havg any deals with, the recer shl be concerned to enquire whether any case has happened to authorise him to act or orwise as to the regularity of his proceedings. **AND** it is hby declared that :

(x) In this deed where the context so requires or admits the expression " the receiver " shl include the receiver for the time being appted under the power conferred by this deed or by statute.

Appoint-
ment of
receiver.
A short
form by
reference
to the
statute.

2. **IN** conson of the premes the borr, with the concurrence of the mtgee, hby appts the recer to be recer of the rents, profits, & income of the mtged premes : **AND** it is hby agrd that all the provons of the L. P. Act, 1925, with reference to recers appted under the statutory power in that behalf, shl **[subjt to the variations hrin contd]** apply with reference to the recer & to any new receiver appted by the mtgee : **[PROVD ALWAYS** that any recer appted by the mtgee of the mtged premes or any pt throf under the statutory power (b) may from time to time & at all times in his own name, but as agent for the borr, &c., *continue power to make allowances, p. 79, & provon as to surplus rents, p. 80, if desired.* **]**

(b) Where a receiver is appointed under the preceding form by reference to the statute, say, " that the recer & any new recer appted under the statutory power in that behalf."

PRECEDENTS (a).

I.

MORTGAGE *by DEMISE of a LEGAL ESTATE in FREE-*
HOLDS by an ESTATE OWNER absolutely entitled.
 VARIATIONS *for MORTGAGE to TRUSTEES OR OTHERS*
ADVANCING MONEY on a JOINT ACCOUNT (b).

THIS DEED OF MORTGAGE made the — day of —, Parties.
 BETN A., *mtgor*, of, &c. (hrinar called the borrr which expression
 shl also include the este owner or este owners for the time being
 of the fee simple of the mtged premes), of the one part, and B.,
mtgee, of, &c. (hrinar called the mtgee), of the other part.

Recite title of mtgor, p. 7, f. 1; agrmt for loan, p. 10, f. 1.

NOW THIS DEED made in psuance of the sd agrmt, &, Recitals
 (c).
conson & receipt clause, p. 14, f. 1, WITNESSETH as Wit-
nesseth.
 follows :—

1. *Covenant for payment of ppal & intt & intt after default,*
p. 15, f. 1, & p. 17, f. 2.

(a) In this edition express powers of sale, leasing and appointment of a Reliance
 receiver, and express covenants for title are, as a general rule, omitted on L. P.
 throughout the mortgage precedents in reliance on the L. P. Act, 1925; Act pro-
 but in appropriate cases provisions extending, restricting, or negating visions.
 the provisions of that Act are inserted. As to the statutory powers, see
 p. 51 (power of sale), p. 63 (power of leasing), p. 77 (appointment of a
 receiver).

The plan is also adopted of defining the expression "the borrower" Definition
 to cover all persons bound by and interested in the security. There is clause.
 no longer any necessity to mention the assigns of the mortgagee, except
 in the case referred to, *ante*, p. 16, as by s. 114, of the L. P. Act, 1925,
 a transfer operates to vest in a transferee the benefit of and right to sue
 on all covenants with the mortgagee and the right to exercise all his powers.

(b) Where the mortgage is to trustees or others lending money on a Mort-
 joint account, in reciting the agreement for the loan, use f. 2 on p. 10; gages to
 and in the consideration and receipt clause, use the variation in note (b) trustees.
 on p. 15. The only other variations will be the substitution of the plural
 for the singular.

(c) Recitals may in simple cases be omitted, in which case the words
 "Now This Deed" and the words at the beginning of the witnessing
 part referring to the agreement will be omitted.

2. The borr as **benef owner** hby demises unto the mtgee *Parcels*, Vol. I., pp. 480 *et seq.* [or the ppty set out in the schdle hrto]; *Habendum*, p. 22, f. 1; *Proviso for redmon*, p. 24, f. 1.

3. The borr hby covts with the mtgee AND IT IS HBY AGREED & DECLARED AS FOLLOWS:—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covenant to repair & insure, if required*, p. 40, f. 4, or p. 43, f. 5.

[(iii) *Covenant against registron, if required*, p. 45, f. 10.]

(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. *Attornmt clause (d)*, p. 75, f. 1.]

IN WITNESS, &c. (e).

[Schedule.]

II.

CHARGE *by way of* LEGAL MORTGAGE (f) of a LEGAL ESTATE in FREEHOLDS or LEASEHOLDS *by an* ESTATE OWNER *absolutely entitled.*

THIS LEGAL CHARGE made BETN A., of &c. (hrinar called the borr *continue definition* as in *Prec. I.*, p. 83) of the one

(d) In cases where the mortgagor is in possession of the land the attornment clause should be added so as to enable the mortgagee to recover possession by summary proceedings: see *ante*, p. 75, note (c), and note (a), p. 77.

(e) If the mortgaged land is situate within the jurisdiction of a local deeds registry a memorial of this mortgage must be registered there: *L. P. Act, 1925, s. 11.*

(f) This form is based upon the form of charge by way of legal mortgage contained in the Fifth Schedule of the *L. P. Act, 1925*. By s. 87 of the *Act* a mortgagee has the same protective powers and remedies including the right to take proceedings to obtain possession from occupiers and persons in receipt of the rents and profits under a mortgage in this form as under a mortgage by demise of a legal term. In order to obtain these remedies and to enforce the rights attaching to the security the charge has to be converted notionally into a mortgage by demise. Owing to the lack of a legal estate actually created in favour of the mortgagee and the notional conversion of the security which must take place before the security can be enforced it is not thought that mortgages in this form will be extensively used in practice. In the case of leaseholds where the lease contains a covenant against sub-demising or assigning without the licence of the lessor a mortgage made in the form in the text would be exempt from the necessity of obtaining such licence: *Gamble v. Faulkener*, [1900] 2 Q. B. 267: but an assignment by the mortgagee to a purchaser on enforcement of the security would still require the licence. It is

pt & B., of, &c. (hrinar called the mtgee), of the other pt.

Recite title of mtgor, p. 7, f. 1 ; *agrmt for loan*, p. 10, f. 1.

Now in conson of the sum of £——, now pd by the mtgee to the borr (the rect of wch sd sum the borr hby acknowledges), THIS DEED WITNESSETH as follows :—

1. *Covenant for paymt of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The borr as **benefi owner** hby charges by way of legal mtge. ALL & singular the ppty mentd in the schdle hrtto with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borr.

3. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

Continue as in Prec. I., p. 84, *adding in the case of leasehds the provision to clause 5 (vii) in Prec. IV.*, p. 89, *if required*.

IN WITNESS, &c. (g).

The Schedule above referred to.

III.

MORTGAGE of FREEHOLDS formerly COPYHOLDS subject to UNEXTINGUISHED MANORIAL INCIDENTS (a).

Parties A., *mtgor* (hrinar called the borr, *defined as in Prec. I.*, p. 83), 1 ; & B., *mtgee* (hrinar called the mtgee), 2. WHAS the

specifically enacted in s. 86 (1) that the licence shall not be unreasonably withheld, so that the existence of such a covenant in the lease would not appear to afford a good reason for taking the security in the form of a charge.

(g) If the mortgaged land is situate within the jurisdiction of a local deeds registry, a memorial of this mortgage must be registered there : L. P. Act, 1925, s. 11.

(a) As to the position, and form of the draft when a compensation rent-charge has been effected, see Vol. I., sub-tit. *Conveyances on Sale*. Alienation without licence does not work a forfeiture : L. P. Act, 1922, Twelfth Schedule, para. (1) (a); but where under the former custom of the manor such alienation did have that effect, a fine is payable on alienation so long as the manorial incidents remain unextinguished : L. P. Act, 1922, s. 130 (2). Subject to the above, a fine is also payable, when the mortgagee sells or forecloses, or transfers the security without the concurrence of the mortgagor : s. 130 (3). The right of the lord to a double fine in the case of a mortgagee, not admitted before the 1st January, 1926, alienating after that date is preserved by s. 130 (4). A mortgagor may not enter into a compensa-

borr is the este owner in respt of the fee simple of the ppty hby mtged wch was formerly copyhd of the manor of — but by the effect of the L. P. Act, 1922, is now freehd subjt to the manorial incidents & rts of the lord of the sd manor & liabilities hrinar mentd but orwise free from incumbrances : *Agrmt for loan*, p. 10, f. 1.

NOW THIS DEED made in psuance of the sd agrmt & conson & recpt clause, p. 14, f. 1. WITNESSETH as follows :—

1. *Covenant for paymt of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 1.

2. The borr as benef owner hby demises (b) unto the mtgee *Parcels*, Vol. I., pp. 480 *et sq.* ; *Habendum*, p. 22, f. 1 ; adding “subjt to such manorial incidents & rts of the sd lord in respt of mines, minerals, & orwise, & other liabilities as are or may be saved or imposed by the Property Acts, 1922 & 1924, & any Act applied by the same for the time being affectg the ppty hby mtged & subjt to the proviso for redmon hrinar contd.” *Proviso for redmon*, p. 24, f. 1.

3. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Proviso for reducon of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(iii) *Covenant agst registron if required*, p. 45, f. 10.]

(iv) Durg the continue of this secy the mtgee may witht the consent of the borr pay to the steward of the sd manor all such fines reliefs heriots rents & dues as may be declared by the sd steward to be payable in respt of the ppty hby mtged bfe an endorsemnt of this deed will be made by the sd steward & also the prescribed fee for proving the sd endorsemnt & generally may make such arrangemts with the sd steward as may appear to the mtgee to be necy or proper for pfectg & preservg the secy hby created.

(v) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. Attornmnt clause, p. 75.]

5. In this deed where the context so requires or admits the expression “steward” shl include the lord of the sd manor

tion agreement with the lord for extinguishing manorial incidents without the written consent of the mortgagee : L. P. Act, 1922, s. 138 (5).

(b) Or, “Hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal intt & other moys hby covtd to be pd by the borr,” omitting the proviso for redemption.

until the apptmt of a steward & the steward for the time being throf includg the Land Registrar.

IN WITNESS, &c. (c).

IV

MORTGAGE of a LEGAL ESTATE in LEASEHOLDS by an ESTATE OWNER absolutely entitled (a). VARIATIONS where RECITALS are OMITTED, and where a SINKING FUND POLICY is INCLUDED in the SECURITY (b), and where PART only of PREMISES are MORTGAGED.

PARTIES, as in *Prec. I.*, p. 83, defining the *borr* as includg the este owner or este owners for the time being of the lease hby mtged."

Recite lease to mtgor [or to X], p. 7, f. 3; [*devolution of title* Recitals. to mtgor, p. 8, f. 4, or assignment of lease to mtgor, Vol. I.,

(c) The mortgage must be produced to the steward for endorsement within six months or it will become void so far as regards the grant of the legal estate: L. P. Act, 1922, s. 129 (1), (2), and (3). As to the form of the endorsement see S. R. & O. 811 of 1925.

(a) Mortgages of leaseholds by assignment are no longer practicable, since s. 86 (2) of the L. P. Act, 1925, converts any such mortgage into a mortgage by sub-demise for a term ten days less than the term expressed to be assigned, or in the case of second or subsequent mortgages for a term at least one day less than the term expressed to be assigned. Where a licence to sub-demise is necessary such licence shall not be unreasonably withheld: s. 86 (1). There is no longer any need to declare a trust of the reversion expectant on the mortgage term, or to appoint the mortgagee attorney of the mortgagor to enable the former to dispose of the whole term when exercising his power of sale. Section 89 enables a mortgagee to sell and convey the leasehold reversion unless expressly excepted by leave of the Court, and to execute the assignment in the name of the mortgagor. But the power to sell and convey the reversion is without prejudice to incumbrances or trusts affecting the reversion, and paramount to the mortgage, and does not extend to cases where the mortgage term does not comprise the whole of the land included in the reversion if the rent reserved by the lease is of a money (as distinguished from a nominal) value and no apportionment has been made: s. 89 (6). See *post*, p. 89, note (a).

(b) Recitals might in this case be dispensed with by treating the mortgage as supplemental to the lease, or to the assignment thereof to the mortgagor: see the L. P. Act, 1925, s. 58, and Vol. I., p. 88, note. This may be done by adding the following words after the parties: "suppl to a lease (hrinar called the ppal deed) dated, &c., & made, &c., being a lease of certain messuages, lands, & ppty situate,

Wit-
nesseth.

p. 452] ; [title to sinking fund poly, p. 8, f. 6] ; agrmt for loan, p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt &, conson & receipt clause, p. 14, f. 1. WITNESSETH as follows :—

1. Covenant for paymt of ppal & intt & intt after default, p. 15, f. 1, & p. 17, f. 2.

2. The borr as benefl owner hby demises (c) unto the mtgee all the premes demised by the recited lease. *Habendum*, p. 23, f. 2.

Assign-
ment of
policy.

3. The borr as benefl owner hby assns unto the mtgee ALL that sinking fund poly, Vol. I., p. 490, f. 3. To HOLD unto the mtgee subjt to the proviso for redmon hrinar contd] ;

4. Proviso for redmon, p. 24, f. 1 [or], [where a sinking fund

&c., to the borr for a term of — yrs from the — day of — at the yearly rent of £—,” or, “ being an assnmt to the borr of a lease dated, &c., of certain messes, &c., situate, &c.”

For variations for a mortgage to trustees, see *ante*, p. 83, note (b).

Regis-
tered
land.

Section 39 of the L. R. Act, 1925, makes void subject to the exceptions prescribed by L. R. Rules ; a mortgage off the register which deals exclusively with registered land, and is capable of being effected on the register, but s. 106 permits such mortgages off the register when not accompanied by a registered charge. See further on both these sections, *post*, pp. 275, 276.

As to dis-
claimer of
lease and
vesting
order in
bank-
ruptcy.

It is also to be remembered that in the event of the bankruptcy of the mortgagor the lease is liable to be disclaimed by the trustee in bankruptcy (including the official receiver, *Re Cohen*, [1905] 2 K. B. 704), so that the mortgagee may have to choose between losing his security and having the lease vested in him by order of the Court ; see the Bankruptcy Act, 1914, s. 54, sub-ss. 1, 2, 3, 6 ; *Re Finley*, 21 Q. B. D. 475 ; *Re Baker*, [1901] 2 K. B. 628 ; see also *Turquand v. Board of Trade*, 11 App. Cas. 286 ; *Re Cock*, 20 Q. B. D. 343 ; *Re Smith*, 25 Q. B. D. 536 ; *Re Holmes*, [1908] 2 K. B. 812 ; and 42 Sol. J. 210 ; 228. It has not been decided what is the mortgagee's position when an order vesting the original lease in him has been made : *Re Morgan*, 22 Q. B. D. 592 ; the words of the Act being that such an order shall only be made “ upon the terms of making such person “ (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, or (b) if the Court thinks fit subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ; and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order ” : see *Re Carter & Ellis*, [1905] 1 K. B. 735.

(c) Or, “ Charges by way of legal mtge ALL the premes demised by the recited lease with paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borr,” omitting proviso for redemption.

poly is included, say "surr the premes hrinbfe demised & reassn the premes hrinbfe assned."]

5. The borrr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5, with first variation in note (b) on p. 42.

(iii) *Events on which power of sale shl be exerciseable*, p. 58, f. 7, including sub-clauses (iii.) & (vi.).

(iv) *Power to sell leasehds in lots by way of underlease, if required*, p. 61, f. 11.

[(v) *Power to sell policy by way of surrender*, p. 61, f. 12.]

(vi) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[(vii) The mtgee shl in relon to the ppty comprised in this seey have all the powers conferred by s. 89 of the L. P. Act, 1925, as if the premes hby mtged comprised the whole of the premes demised by the sd lease & the borrr hby irrevocably appts the mtgee & his assns his atty & attys to sell & convey the reversion expectant on the sub term hby created (a).]

6. *Attornment clause*, p. 75.]

IN WITNESS, &c.

V.

DEED of STATUTORY MORTGAGE under section 117 of the
LAW OF PROPERTY ACT, 1925 (b).

THIS LEGAL CHARGE made by way of staty mortge,
the — day of —, 19—, BETN A., mtgor, of — of the one

(a) This clause is intended to be used only where the mortgage affects part only of the property comprised in a lease, and there has been no legal apportionment of the rent and covenants under s. 141 of the L. P. Act, 1925: see *ante*, pp. 3, 4, in which case the assignment of the part mortgaged will be recited. The assigns of the mortgage can be validly included as donees of the power of attorney: L. P. Act, 1925, s. 128; and a certified copy of this clause should be filed in the Central Office: s. 125. See Vol. I., p. 205.

(b) This is the form of mortgage given in the fourth schedule to the L. P. Act, 1925, which has a special operation by virtue of s. 117, which enacts that there shall be deemed to be included and shall be implied, in a mortgage of freehold or leasehold land made in the form in that schedule, a covenant with the mortgagee, by the person expressed to convey as mortgagor, for payment of the mortgage money with interest at the stated rate, and for payment of interest after default, as well after as before any judgment, and the usual proviso for redemption. The mortgage may be made with

Statutory
mort-
gage.

pt, & M., *mtgee*, of — of the other pt, WITNESSETH that in conson of the sum of £— now pd to A., by M. of wch sum A. hby acknowes the rect, A. as *mtgor* & as *benefl owner* hereby charges by way of legal *mtge* ALL that *parcels* with the paymt to M. on the — day of —, 19—, of the *ppal* sum of £— as the *mtge* moy with *intt* thron at the rate of — p.c. p.a.

IN WITNESS, &c.

VI.

MORTGAGE of a LEGAL ESTATE in FREEHOLDS. PROVISION for CONTINUANCE of LOAN for a TERM CERTAIN. PROVISIONS as to GUARANTEE POLICY effected with a MORTGAGE INSURANCE COMPANY, and for varying STATUTORY POWERS of SALE and LEASING. APPOINTMENT of a RECEIVER. VARIATIONS where the PRINCIPAL is to be repaid by INSTALMENTS, and where the SECURITY extends to FURTHER ADVANCES (c).

PARTIES, A., *mtgor* (hrinar called the *borr*, defined as in *Prec. I.*), 1; B., *mtgee* (hrinar called the *mtgee*), 2; C., *reccer*, 3.
 Recitals. *Recite* title of *mtgor*, p. 7, f. 1; *agrmt* for loan, p. 10, f. 1 [in case of further advances, p. 11, f. 4]; *agrmt* to effect guarantee poly, p. 9, f. 9. NOW THIS DEED made in psuance of the sd *agrmt* &, *conson* & *receipt* clause, p. 14, f. 1 [in case of further advances, p. 15, f. 5], WITNESSETH as follows:—
 Wit-
 nesse th.

1. *Covenant* for *paymt* of *ppal* & *intt*, p. 15, f. 1 [in case of further advances, p. 18, f. 6] & *intt* after default, p. 18, f. 2.

variations for leasehold land or for giving effect to special arrangements: note to form 1 of the Fourth Schedule of the Act. The use of the statutory form of mortgage would enable the short statutory forms of transfer in the second part of the schedule to be used; but the inconvenience attending the use of statutory forms is such, and the advantage so inconsiderable, that the form (though it is to some extent used) is not recommended for general use.

(c) As to the effect of a second mortgage on further advances by the first mortgagee, see *ante*, p. 33, note (d).

Stamp.

Where the mortgage is to secure future advances, the *ad valorem* stamp should be sufficient to cover the total amount, if limited. If not limited, the security is available only for the amount which the *ad valorem* stamp extends to cover: see Stamp Act, 1891, s. 88; but by the effect of sub-s. (2), if an advance is made in excess of the amount, the stamp may be then added to.

2. The borr as **benefi owner** hby demises (d) unto the mtgee *Parcels*, Vol. I., pp. 480 *et seq.* ; *Habendum*, p. 22, f. 1. *Proviso for redmon*, p. 24, f. 1, [in case of further advances, p. 26, f. 3.]

[3. *Covenant by mtgee to make further advances*, p. 33, f. 8.]

4. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Provision for continuance of loan for term certain*, p. 29, f. 2, [in case of further advances add variation in note (a) on p. 30].

[(iii) *Provision for paymt by instalmts*, p. 30, f. 4.]

(iv) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(v) *Covenant against registron*, if required, p. 45, f. 10].

(vi) *Covenant to keep up guarantee policy*, p. 40, f. 3, with variation in note (a).

(vii) *Events in which power of sale shl b^e exercisable*, p. 58, f. 7, including sub-clauses (i), (v) & (x).

(viii) *Clause restricting mtgor's power of leasing*, if required, p. 65, f. 2.

(ix) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[5. *Attornment clause*, p. 75.]

6. *Appointment of receiver*, p. 82, f. 2.

IN WITNESS, &C.

VII.

SECOND MORTGAGE of a LEGAL ESTATE in FREEHOLDS (a).

PARTIES, as in *Prec. I.*, p. 83.

WHAS by a mtge dated, &c., & made, &c., in conson of the sum of £—— pd by the sd X [& Y out of moy belonging to

Recitals.

(d) Or, "Hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covted to be pd by the borr," omitting the proviso for redemption.

(a) Notice of this deed should be given to the first mortgagee, in order to prevent him from tacking further advances where this is now possible : L. P. Act, 1925, s. 94 ; or paying the surplus proceeds of sale to the mortgagor, and also to insure that the second mortgagee should get the title deeds on the first mortgage being discharged : *Teevan v. Smith*, 20 Ch. D. 724 ; *West London Commercial Bank v. Reliance, &c., Society*, 29 Ch. D.

Notice.

them on a joint acct] the ppty hby demised was demised to the sd X [& Y] for the term of — yrs from the date of

954; *Re Magneta Time Co.*, 84 L. J. Ch. 814. In the absence of such notice a prior mortgagee is not liable for delivng the title deeds to the person not having the best right thereto: L. P. Act, 1925, s. 97 (2). Registration as a land charge under the L. C. Act, 1925, or in a local deeds registry where the instrument registered creates a legal estate (*secus* where it does not and registration is unnecessary) constitutes actual notice of the instrument registered as from the date of registration to all persons connected with the land and for all purposes: L. P. Act, 1925, ss. 197, 198. If possible the notice should be indorsed on the first mortgage, so as to render it certain that transferees of the first mortgage will take with notice. As to the doctrine of constructive notice of any instrument capable of registration under the L. C. Act, 1925, which is void or unenforceable by reason of non-registration and of any other instrument, matter, fact, or thing, see s. 199 of the L. P. Act.

Priorities. All terms created for the purposes of second and subsequent mortgages will be legal, not equitable, terms, usually for one year in the case of freeholds and for one day in the case of leaseholds, longer than the term created by the prior mortgage, though it would seem that even if the extra year or day is omitted the subsequent mortgagee will still get a legal term: *Re Moore & Hulme's Contract*, [1912] 2 Ch. 105. A mortgage, whether legal or equitable, made after the 31st December, 1925, which is not protected by the deposit of the title deeds relating to the legal estate affected (called in s. 10 (1) Class C (i) of the L. C. Act, 1925, a "puisne mortgage") ranks in priority according to the date of its registration under the L. C. Act, 1925; L. P. Act, 1925, s. 97; but the section does not affect mortgages or charges of registered land or of land within the jurisdiction of a local deeds registry.

As the title deeds will rarely come into the possession of a subsequent mortgagee on the creation of his mortgage it is most important for him to procure registration of his puisne mortgage. The protection formerly given by the acquisition of the legal estate against mere equitable incumbrancers and the risks attendant upon not obtaining it are no longer of any importance in the case of mortgages of land executed after the 31st of December, 1925. Sub-section (7) of s. 10 of the L. C. Act, 1925, permits a puisne mortgagee whose mortgage was created before the 1st of January, 1926, to register his mortgage as a land charge before a transfer is made, and such a mortgage, if not so registered, remains an equitable interest only as against a purchaser or mortgagee in good faith without notice: para. 6 of Part VII., and para. 5 of Part VIII., of the First Schedule of the L. P. Act, 1925.

Local registries. All mortgages which create legal terms or charges by way of legal mortgage in or over land situate in Middlesex or Yorkshire must be registered in the appropriate deeds registry: L. P. Act, 1925, s. 11 (1), and puisne mortgages in the former county are expressly excepted from the partial repeal of the Middlesex Registry Act, 1708, so far as regards land charges, contained in the L. C. Act, 1925, s. 18. An unregistered instrument in both these counties is liable to be defeated by a subsequent instrument which is registered: see further on local registration, William's V. & P., 3rd ed., p. 361.

the mtge now in recital witht impeachmt of waste by way of mtge [was charged by way of legal mtge in favour of the sd X [& Y] [or where the mtge was created before 1st of Jany. 1926, say "under & by virtue of a mtge dated, &c., and the provons of the L. P. Act, 1925, the ppty hby demised is now vested in the sd X [& Y] for the term of 3,000 yrs from the 1st day of Jany. 1926, witht impeachmt of waste] to secure the paymt to the sd X [& Y] of the sum of £—— with intt thron as thrin mentd, agrmt for loan, p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt &, conson & receipt clause, p. 14, f. 1, WITNESSETH as follows :—

1. *Covenant for payment of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The borr as *benefl owner* hby demises (b) unto the mtgee *Parcels*, Vol. I., pp. 480, *et seq.*; *Habendum subjt to prior mtge*, p. 22, f. 1, *with first variation in note (d)*, *Proviso for redmon*, p. 24, f. 1, *with first variation in note (b)*, on p. 26.

3. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5, *adding, if prior mtge contains covts to repair & insure, second variation in note (b)* on p. 42.

[(iii) *Covenant agst registron*], *if required*, p. 45, f. 10.

(iv) *Events in which power of sale shl be exercisable*, p. 58, f. 7, *including sub-clause (i) & (iv)*; or, *Provision excluding s. 103 of the L. P. Act, 1925*, p. 61, f. 8.

If time under the Statutes of Limitation begins to run against a second mortgagee, the fact that the first mortgagee subsequently goes into possession does not suspend the operation of the statutes: *Johnson v. Brock*, [1907] 2 Ch. 533; cf. *Wakefield and Barnsley Union Bank v. Yates*, [1916] 1 Ch. 452. Statutes of Limitation.

The mortgagor (including any person deriving title under the original mortgagor or entitled to redeem, L. P. Act, 1925, s. 205 (1) (xvi); *Teevan v. Smith*, 20 Ch D., at p. 730), has the right to inspect, &c., title deeds in the hands of the mortgagee, see the L. P. Act, 1925, s. 97 (1); 33 Sol. J. 707. This sub-section applies only where the first mortgage was made after 1881. Right of mortgagor to inspect deeds.

(b) Or, "Hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borr subjt to the secy created by the sd mtge of —— (*first mtge*)" and omitting the proviso for redemption.

(v) *Power to sell subjt to or discharged from first mtge*, p. 62, f. 13.

(vi) *Power to pass accts of prior incumbrancer*, p. 47, f. 12.

(vii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. *Attornment clause*, p. 75.]

IN WITNESS, &c.

VIII.

SECOND MORTGAGE of a LEGAL ESTATE in LEASEHOLDS. A SURETY joining to COVENANT for PAYMENT of PRINCIPAL and INTEREST (a). VARIATIONS where the MORTGAGE extends to FURTHER ADVANCES (b). VARIATION for RENEWABLE LEASEHOLDS (c).

Parties. *PARTIES*, A., *mtgor* (hrinar called the *borr*, defined as in *Prec. IV.*, p. 87), 1; B., *surety* (hrinar called the *surety*), 2; C., *mtgee* (hrinar called the *mtgee*), 3.

Recitals. *Recite lease*, p. 7, f. 3; [devolution of title to *mtgor*, p. 8, f. 4, or *assmnt of lease to mtgor*, Vol. I., p. 445]; AND WHAS by *mtge* dated, &c., & made, &c., in conson of the sum of £—— pd by the sd X. [& Y. out of moys belonging to them on a joint acct] the ppty hby sub-demised was sub-demised unto the sd X. [& Y.] for the residue of the sd term of —— yrs less the last

(a) As to the law of suretyship, see Vol. I., p. 52, note (b), *ante*, p. 35, note (h). As to the rights of the surety where further advances are made, see *Forbes v. Jackson*, 19 Ch. D. 615. As to the rights of co-sureties *inter se*, see *Berridge v. Berridge*, 44 Ch. D. 168; and as to the effect of the release or death of one co-surety: see *Mercantile Bank of Sydney v. Taylor*, [1893] A. C. 317; *Re E. W. A.*, [1901] 2 K. B. 642; *Beckett v. Addyman*, 9 Q. B. D. 783; and as to the right of a surety to a collateral security, see *Dixon v. Steel*, [1901] 2 Ch. 602.

(b) As to securities for further advances and the stamp duty thereon, see *ante*, p. 90, note.

As to notice of this deed, see *ante*, p. 91, note.

(c) For renewable leaseholds add the following clause: "The *borr* as *benefl owner* hby assns unto the *mtgee* ALL such rt to renewal of the sd lease as is subsistg by virtue of the covts & prvons thrin contd To HOLD the same unto the *mtgee* subjt to the sd *mtge* of —— & subjt to the provon for redmon hrinar contd." *Proviso for redmon*, p. 26, f. 2.

— days [charged by way of legal mtge in favour of the sd X. [& Y.] *[or if the mtge were created by assmt before 1st January, 1926, say, “whas under & by virtue of a mtge dated, &c., & the provons of the L. P. Act, 1925, the ppty hby sub-demised is now vested in the sd X. [& Y.] for all the residue of the sd term of — yrs less the last 10 days throf]* by way of mtge to secure the paymt to the sd X. [& Y.] of the sum of £—— with intt thron as thrin mentd; *agrmt for loan, p. 10, f. 1 [in case of further advances, p. 11, f. 4]; agrmt that surety shl join, p. 11, f. 8; [surety independently advised, p. 11, f. 9].* NOW THIS DEED made in psuance of the sd agrmt &, *conson & receipt clause, p. 14, f. 1 [in case of further advances, p. 15, f. 5]* WITNESSETH as follows: Wit-
nesseth.

1. *Covenant for paymt of ppal & intt, p. 15, f. 1 [in case of further advances continue “and also on such — day of —” &c., as at p. 18, f. 6] & intt after default, p. 17, f. 2.*

2. *Proviso limiting surety's liability, p. 35, f. 6.*

[3. *Covenant by mtgee to make further advances, p. 33, f. 8.]*

4. The borr as **benefl owner** hby demises (d) unto the mtgee ALL the ppty demised by the recited leases; *Habendum, p. 23, f. 2, for a term one day longer than that vested in the first mtgee & adding the first variation in note (d), p. 22; proviso for redmon, p. 24, f. 1 [in case of further advances, p. 26, f. 3, with first variation in note (d).]*

5. The borr & the surety jtly & severally covt with the mtgee AND IT IS HBY AGRD AND DECLARED AS FOLLOWS:

(i) *Provision for reduction of intt on punctual paymt, p. 29, f. 1.*

(ii) *Covenant for renewal of lease, with variation for prior mtge, p. 45, f. 9.*

(iii) *Covenant to repair & insure, p. 40, f. 4, or p. 43, f. 5; if prior mtge or lease contains covts to repair & insure, adapt variation in note (b) on p. 42.*

(iv) *Provision as to primary liability between mtgor & surety, p. 35, f. 3.*

(d) Or, “Hby charges by way of legal mtge ALL the ppty demised by the recited lease, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borr subjt to the secy created by the sd mtge of — first mtge” omitting the proviso for redemption.

(v) *Declaration that surety shl be liable as a ppal debtor,*
p. 35, f. 4.

(vi) *Events in which power of sale shl be exercisable,*
p. 58, f. 7, *including sub-clauses (iii), (iv), (vi), & (xii), or*
clause excluding s. 103 of L. P. Act, 1925, p. 61, f. 8.

(vii) *Power to sell subjt to or discharged from first mtge,*
p. 62, f. 13.

(viii) *Power to sell leasehds in lots by way of underlease,*
p. 61, f. 11.

(ix) *Power to pass accts of prior incumbrancer, p. 47, f. 12.*

(x) *Charge of mtgee's expenses with intt, p. 74, f. 11.*

[6. Attornment clause, p. 75.]

IN WITNESS, &c. (p).

IX.

MORTGAGE of a LEGAL ESTATE in FREEHOLDS.

A PRIOR MORTGAGEE *joining to* POSTPONE *his*
SECURITY (a).

Parties.	<i>PARTIES, A., mtgor (hrinar called the borrr, defined as in</i>
	<i>Prec. I., p. 83), 1 ; B., prior mtgee, 2 ; C., mtgee (hrinar called</i>
Recitals.	<i>the mtgee), 3. Recite prior mtge of freehds, setting out only the</i>
	<i>demise (charge) or convce in fee & conversion into a 3,000 yrs</i>
	<i>term under the L. P. Act, 1925, p. 9, f. 10 ; agrmt for loan, p.</i>
	<i>10, f. 1 ; agrmt by prior mtgee to postpone secy, p. 12, f. 10.</i>
	<i>NOW THIS DEED made in psuance of the sd agrmt &</i>
	<i>conson & receipt clause, p. 14, f. 1, adding "and in conson of</i>
	<i>the covt for productn of the title deeds on the pt of the mtgee</i>
Wit- nesseth.	<i>hrinar contd (b)," WITNESSETH as follows :—</i>

(p) See *ante*, p. 89 note (a).

(a) This transaction will be effected by two deeds, one assigning the original mortgage term to the new mortgagee and the other creating a new mortgage term subject to the first and vested in the prior mortgagee. A precedent of this latter deed will be found in *Prec. X, post*, p. 98. As to a promise by the mortgagor being implied, to indemnify the mortgagee against any loss resulting from the postponement of his security, see *Ex p. Ford*, 16 Q. B. D. 305.

(b) Unless the new mortgagee is willing to give an acknowledgment for production of the original mortgage, the second mortgage to the original mortgagee should set out afresh the covenant for payment and other clauses for the preservation of the security.

1. *Covenant for paymt of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The sd B., as mtgee at the request of the borr hby assns & releases (c) & the borr as benefl owner hby assns & confirms unto the mtgee, *Parcels*, Vol. I., pp. 480 *et seq.*; To HOLD UNTO of the mtgee for all the residue now unexpired of the term created by [subsisting under] the sd mtge discharged from the sd sum of £—— *the prior mtge debt & all intt due & to grow due for the same & the secs for the same & from all claims & demands under or by virtue of the recited mtge but subjt to the proviso for redmon hrinar contd*; *Proviso for redmon*, p. 24, f. 1.

Assign-
ment.

3. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

Proviso
for
redemp-
tion.

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(iii) *Covenant against registr onof "freehd ppty," if required*, p. 45, f. 10].

(iv) *Events in which power of sale shl be exercisable*, p. 58, f. 7.

(v) The mtgee shl at any time after the power of sale applicable hto shl have become exercisable at the written request of the sd B. take such proceedings or steps for enforcing this secy as he shl direct.

(vi) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. *Attornment clause*, p. 75.]

[5. *Acknowledgment for production*, Vol. I., p. 515.]

IN WITNESS, &c.

(c) If the prior mortgage comprises other property, add here :—" Provd always that nothing hrin contd shl prejudice or affect the secs for the sd sum of £—— & intt except so far as regards the sd ppty comprised in this psnt secy, and that so far as regards such last mentd ppty nothing hrin contd shl prejudice or affect the same any further than by the postponemt throf to this psnt secy."

X.

SECOND MORTGAGE of a LEGAL ESTATE in FREEHOLDS
to a PRIOR MORTGAGEE who has POSTPONED (a) HIS
SECURITY.

PARTIES A. *mtgor* (hrinar called the borr, *defined as in Prec. I.*, p. 83), 1 ; B., *prior mtgee* (hrinar called the mtgee) ; 2. *WHAS* by a deed of surr and assnmt dated, &c., & made between the borr of the first pt the mtgee of the second pt, & *new mtgee* of the third pt, the mtgee surrd his secy upon & assned the mtgee term then vested in him in the ppty hrinar mentd upon the terms that he should have such substituted secy as was contd in a deed thrin mentd meang this deed. *State of mtge debt*, p. 12, f. 11.

AND *WHAS* the borr agrd previously to the execon of the sd deed of surr & assnmt to give to the mtgee such secy upon the ppty hrinar mentd as is hrinar contd.

NOW THIS DEED made in pursuance of the sd agrmt WITNESSETH as follows :—

The borr as *benefl owner* hby demises (b) unto the mtgee *Parcels*, Vol. I., pp. 480, *et seq.* ; To hold the same unto the mtgee for the term of 1,001 yrs from the date hrof *or a term longer than the prior mtge term* witht impeachmt of waste subjt to the mtge subsisting under the sd deed of surr & assnmt & subjt to the like rt of redmon on paymt of the ppal moys & intt previously owing on the secy of the sd surrd mtge & with the like [pwr of sale & other] provons (c) for securing & obtaing paymt of the sd ppal moys & intt & with the benefit of the like covts on the pt of the borr & subjt to the like provons in all respts as are contd or implied in or conferred by the sd surrd mtge concerng the premes comprised thrin to the intent that the secy hby created may be in all respects substituted for the sd surrd mtge as a secy for the paymt of the sd sum of £—— & intt.

IN WITNESS, &c (d).

(a) As to the stamp on a substituted security, see *post*, p. 189, note (c).

(b) Or, “Hby charges by way of legal mtge ALL, &c., with the paymt by the borr to the mtgee of the sd ppal sum of £—— & intt thron & other moys secured by the sd surrd mtge subjt to the mtge subsistg, &c.”

(c) See *ante*, p. 96, note (b).

(d) This mortgage must be registered as a land charge, see *ante*, p. 92.

XI.

MORTGAGE of LEGAL ESTATE by TENANT FOR LIFE
 (a) under a STRICT SETTLEMENT (b) for giving effect to
 a JOINT POWER OF APPOINTMENT, subject to PRIOR
 CHARGES (c). The PRINCIPAL to be repaid by INSTAL-
 MENTS.

PARTIES, A. tenant for life & este owner hrinar called the
 borr which expression shall include the este owner or este
 owners for the time being in respt of the fee simple of the
 ppty lby mtged, 1; C. & D. trees, 2; E. (hrinar called the
 mtgee), 3. WHAS by a principal vesting deed dated *etc.* and
 made pursuant to section 37 of the S. L. Act, 1925, between
etc. certain ppty situated at — (including the ppty mtged)
 was vested in the borr in fee simple subjt to certain charges
 and incumbrances hrinar mentioned as affecting the same or

Recitals.
 Settle-
 ment.

(a) On the father's death the son may deduct the amount due under the mortgage from the principal value of the property chargeable with estate duty: *Cowley v. I. R. Commrs.*, [1899] A. C. 198; *Att.-Gen. v. Duke of Richmond*, [1909] A. C. 466; unless the mortgage contains provisions relieving the father from the burden as between himself and his son: *Att.-Gen. v. Montagu*, [1904] A. C. 316; and see *Fin. (1909-10) Act*, 1910, s. 57.

(b) The legal estate in land settled so as to be enjoyed by way of succession must be vested in the tenant for life or statutory owner, if more than one as joint tenants, for the interest therein which is the subject of the settlement. Sections 4 to 8 of the S. L. Act, 1925, contain provisions for the conveyance of the legal estate to the tenant for life or statutory owner where the settlement is created after the 31st December, 1925, by either, deed or will. Paragraphs 1 and 2 of the Second Schedule of that Act provide for the execution of vesting deeds by the necessary parties in the case of settlements already subsisting on the 1st January, 1926. All equitable interests and powers in or over settled land, whenever the settlement was created, are enforceable against the estate owner in whom the settled land is vested, who stands possessed thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land of which he has notice according to their priorities: s. 16. By the same section the estate owner is bound to create such legal estate or charge by way of legal mortgage as may be required for raising money or giving effect to an equitable charge upon the request in writing of the person or persons having a general power of appointment over the settled land, whether subject to any equitable charges or powers of charging or not, or to secure money actually raised and affecting the whole estate subject to the settlement where the settled land is subject to an equitable charge. See *post*, p. 139, note (b).

Effect of
 S. L. Act,
 1925.

(c) As to notice and registration of this deed, see *ante*, p. 91, note (a).

some parts thereof upon the trusts thrin declared by reference to a previously subsisting settlement of the same ppty dated *etc.* and made *etc.* And by the same deed B. C. & D. were stated to be the trees of the settlement for the purposes of the S. A. Act, 1925. And whas by a deed dated *etc.* and made pursuant to section 35 of the S. L. Act, 1925, between *etc.* and supplemental to the principal deed it was declared that the trees were the trees of the sd settlement for the purposes of the sd Act. And whas a principal sum of £—— is required to be raised on the security of the ppty comprised in the said vesting deed; *Agrmt for loan, to the borr*, p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt &, *conson & receipt clause, the loan being paid to the borr by the dircn of the trees (e)*, p. 14, f. 2, WITNESSETH as follows:

Wit-
nesseth.

1. Covenant for paymt of ppal & intt, p. 15, f. 1, & intt after default, p. 17, f. 2.

Demise.
Haben-
dum.

2. The sd A. as tree & in exercise of the power in this behalf vested in him by s. 16 of the S. L. Act, 1925, & of every or any other power in this behalf him enablg hby demises (e), *Parcels*, Vol. I., pp. 480 *et seq.*; To hold the same UNTO the mtgee for the term of —— yrs from the date hereof *being one year longer than the prior mtge term* without impeachment of waste subjt to the following incumbrances mentioned in the sd vesting deed, namely, the rent-charges of £—— & £——, & the mtge & the sum of £—— thby secured & the intt now due & henceforth to become due for the same, or “subjt to the charges & incumbrances specified in the schdle hto;” *Proviso for redmon*, p. 24, f. 1

Proviso
for
redemp-
tion.

3. The borr hby covts with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Provision for paymt by instalmts*, p. 30, f. 4.

[(iii) *Power to anticipate instalmts*, p. 31, f. 5].

(iv) *Covt to repair & insure*, p. 40, f. 4, or p. 43, f. 5; *if prior instrument contains covts to repair & insure, add second variation in note (b) on p. 42.*

(e) Or, “Hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borrs subjt *as in text*,” omitting proviso for redemption. See S. L. Act, 1925, s. 95.

(v) *Events in which power of sale shl be exercisable*, p. 58, f. 7, including sub-clause (iv) or clause excluding s. 103 of L. P. Act, 1925, p. 61, f. 8.

(vi) *Power to sell subjt to or discharged from prior mtge*, p. 62, f. 13.

(vii) *Power to pass accounts of prior incumbrancers*, p. 47, f. 12.

(viii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. *Covenant by A. against registration if required*, p. 45, f. 10.]

[5. *Attornment clause*, p. 75.]

IN WITNESS, &c.

[The Schdle above referred to.]

XII.

MORTGAGE by a WOMAN married AFTER 1882 (a) of her FREEHOLDS for her HUSBAND'S BENEFIT (b). VARIATIONS where the WIFE was MARRIED and her TITLE accrued BEFORE 1883 (c).

- Parties. *PARTIES*, A., husband, 1; B., hrinar called the wife of the sd A., which expression shall include the este owner or este owners for the time being in respt of the fee simple of the ppty hby mtged, 2; C., *mtgee* (hrinar called the mtgee), 3.
- Recitals. *Recite title of B.*, p. 17, f. 1; *agrm't for loan to A.*, p. 10, f. 1.

(a) When a married woman executes a mortgage of her property there is no obligation on the mortgagee, though it is prudent for him, to enquire whether a settlement was made on her marriage: *Lloyd's Banking Co. v. Jones*, 29 Ch. D. at p. 230; cf. *Walker v. Linom*, [1907] 2 Ch. 104.

If the husband does not concur in the mortgage it is desirable to recite that the wife's title accrued after 1882.

Effect of mortgage of wife's property for husband's benefit.

(b) Where a wife concurs with her husband in mortgaging her property, and it appears on the face of the deed that the money was paid to the husband, or before 1883 to the husband and wife, the presumption is that the debt is the husband's, and that the wife's property is merely a surety for it. This presumption may, however, be rebutted by showing that the money was dealt with so as to become the wife's separate property, or that it was applied by the husband for her benefit: *Hall v. Hall*, [1911] 1 Ch. 487.

Variations where M. W. P. Acts do not apply.

(c) Where the wife was married and her title accrued before 1883, the old law applies as to her power of disposition, but s. 167 (1) of the L. P. Act, 1925, has abolished the necessity for the deed to be acknowledged. The new law contained in the M. W. P. Acts applies to her powers of contracting, and therefore she can covenant to the extent of her existing or after-acquired property. The variations in this case will be as follows:—*Recite title of A. & B. in right of the latter as in a convce on sale, Vol. I. The assurance will be as follows:—*“The sd B. as **benefl owner** with the concurrence of the sd A. hby demises, & the sd A. as **benefl owner** hby demises & confirms.”

Duty of solicitor.

As to the duty of the solicitor who advises the wife, see *Willis v. Barron*, [1902] A. C. 271. She does not require independent advice: *Bank of Africa, Ltd. v. Cohen*, [1909] 2 Ch. 129; *Western v. Fairbridge*, [1923] 1 K. B. 667; and a person who alleges that her husband has used undue influence must prove it: *Nedby v. Nedby*, 5 De G. & Sm. 377. See, on all these questions, *Bank of Montreal v. Stuart*, [1911] A. C. 120. The amount of undue influence required to avoid a transaction *inter vivos* is far less than is required to invalidate a testamentary gift: *Craig v. Lamoureux*, [1920] A. C. 349.

NOW THIS DEED made in psuance of the sd agrmt & in conson of the sum of £—— now pd by the mtgee to the sd A. at the request of the wife (the receipt & paymt whrof in mnner afsd is hby acknowledged), WITNESSETH as follows : Wit-
nessoth.

1. Joint & several covts by A. & B. for paymt of ppal intt & intt after default, p. 18, f. 4, & p. 17, f. 2.

2. The wife as benefl owner by the diron of the sd A., directing as benefl owner hby demises (d) unto the mtgee, *Parcels*, Demise. Vol. I., p. 480, *et seq.*; *habendum*, p. 22, f. 1; *Proviso for redmon on paymt by* "A. or B.," p. 24, f. 1.

3. The sd A. & the wife hby jtly & severally covt with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Covenants by A. & B. to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(ii) *Covenants against registron, if required*, p. 45, f. 10].

(iii) *Declaration as to primary liability of A.*, p. 34, f. 2.

(iv) *Declaration that B. shl be liable as a ppal debtor*, p. 35, f. 4.

v) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. *Attornment clause*, p. 75.]

IN WITNESS, &c.

XIII.

CONTRIBUTORY MORTGAGE of FREEHOLDS where the MONEY is advanced in DISTINCT SUMS by DIFFERENT MORTGAGEES, (a), PART of the money being advanced by TRUSTEES (b).

PARTIES, A., mtgor (hrinar called the borrh, defined as in Parties. *Prec. I.*, p. 83), 1; B., one mtgee, 2; C., another mtgee, 3; D.

(d) Or, "Hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal moy intt & other money hby covenanted to be pd by the sd A. & B.," omitting proviso for redemption.

(a) A legal estate cannot be limited so as to vest in more than four grantees as joint tenants: see L. P. Act, 1925, ss. 34 (2), 36, and Vol. I., p. 432.

(b) This Precedent is simpler and shorter than a contributory mortgage in the more usual form, with separate covenants for payment of each sum As to con-
tributory

& E., *other mtgees (trees)*, 4 (which sd parties of the second, third, & fourth parts resply including the survors & survivor of them & the exs or ads of such survivor & the assns of any of them are collectively hrinar called the mtgees).

Recitals.
Loan.

Recite title of mtgor, p. 7, f. 1. AND WHAS the sd B., C., & D. & E. have this day advced to the borrr the sum of £6000 in the followg proportions, namely, the sd B. £1000, the sd C. £2000, & the sd D. & E., out of moys belongg to them on a jt acct £3000, upon an agrmt that the repaymt of the sd aggregate sum of £6000, with intt at the rate hrinar mentd, shl be secd to the mtgees, as joint tenants in mner hrinar appearg, but that all ppal moys & intt hby secd (except the sd sum of £3000 & the intt thron), shl in equity belong to the sd B. & C., in the shares & pportns afsd as tenants in common in mner & subjt as hrinar mentd, & that the sd sum of £3000 & the intt thron shl in equity belong to the sd D. & E., as joint tenants in mner & subjt as hrinar mentd: NOW THIS DEED made in psuance of the sd agrmt, & in conson of the sums of £1000, £2000 & £3000 by the sd B., C., & D. & E., resply now pd to the borrr in the proportions & mner afsd (the rect of weh sd sevl sums the borrr hby acknowes, WITNESSETH as follows:—

Wit-
nessesth.

1. *Covenant for paymt of ppal & intt & intt after default (c)*, p. 15, f. 1, & p. 17, f. 2.

mort-
gages.

advanced, and separate powers of sale, &c., to each mortgagee (for a form of which see 2 Dav. Prec., 4th ed. pt. 2, p. 385); the mortgage in the text being, as between the mortgagor and mortgagees, in all respects on the ordinary footing of a mortgage to joint tenants, although as between themselves, the mortgagees collectively are trustees of the several sums secured for such of them as are entitled thereto. The disadvantage of this form is that no one of them can call in his money or exercise the powers without the concurrence of the others, and that the form is not adapted to a case in which there are stipulations (such as for reduction of interest on punctual payment) affecting some only of the sums advanced. Another plan is to take the mortgage in the names of trustees nominated on behalf of all the lenders in the usual form not disclosing the trust, with a separate declaration of trust. Where an existing mortgage is transferred to contributories, the plan in the text, or perhaps preferably, the method of taking the transfer in the names of trustees, with a separate declaration of trust, will be proper.

In the absence of an express power, it is a breach of trust for trustees to invest on a contributory mortgage: *Webb v. Jonas*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328.

Covenant
for pay-
ment.

(c) If each contributory is a single person the covenant might be in f. 7 on p. 18, the advantage of which would be that each mortgagee would be

2. The borr as benefl owner hby demises (d) unto the mtgees, *Demise.*
Parcels, Vol. I., pp. 480 *et seq.*; *habendum* to "the mtgees
as joint tenants," p. 22, f. 1; *Proviso for redmon on paymt*
of agrgegate sum & intt "to the mtgees," p. 24, f. 1.

3. The borr hby covts with the mtgees & with each of them (e),
AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Proviso for reduction of intt on punctual paymt*,
p. 29, f. 1.

(ii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(iii) *Covenant against registron, if required*, p. 45, f. 10].

(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

(v) As betn the borr on the one hand, & the mtgees on
the other hand, the sd aggregate sum of £6000 shl be con- *Provision*
sidered as belongg to the mtgees on a joint acct, & acedly *that as*
the rect of the mtgees shl be an effectual discharge for the same *respects*
& every pt throf resply, & all powers & remedies available *mort-*
under this deed for recoverg paymt of the moys hby seed *gagor,*
(includg all powers & remedies conferred on mtgees by statute) *money is*
shl be exercisable & enforceable by the mtgees acedly, witht *to be*
the concurrence of any other pson or psons who may be benefly *treated as*
entitled to any of such moys; But as betn themselves, the *advanced*
mtgees, shl stand possed of all ppal moys & intt hby seed In *on joint*
trust for the mtgees, their respective exs, ads, & assns, as *account*
tenants in common (g) *pari passu* & witht any preferce or *(f).*
priority in the shares hrinbfe mentd, exceptg that the sd sum *But as*
of £3000 & intt shl be considered as belongg to the sd D. & E. *between*
on a joint acct. *mort-*
gagees
on sepa-
rate ac-
counts.

4. Each of them the mtgees hby covts with the others & *Covenant*
other of them, that he or they will, at any time hrafter, at the *between*
reqt of the others of them or any of them, take or concur in any *mort-*
steps or proceedings (if & so far as his or their action or con- *gagees*
to

able to sue for his own debt (though not to put in force his other remedies),
without the concurrence of the others.

(d) Or, "Hby charges by way of legal mtge ALL, &c., with
the paymt to the mtgees of the ppal moy intt & other moy
hby covenanted to be pd by the borr," omitting proviso for
redemption.

(e) See L. P. Act, 1925, s. 81.

(f) The provisions of the L. P. Act, 1925, s. 111, do not apply to this
case, and the clause in the text is necessary.

(g) See *ante*, p. 10, note (a). *Re Selous*, [1901] 1 Ch. 921, does not appear
to apply to a case of this nature.

where
each con-
tributory
is a single
person.

concur
in pro-
ceedings.

curree thrin may be requisite, havg regard to the clause or provon lastly hrinbfe contd or the circes of the case) wch may be neey or pper for callg in, recoverg or obtaing paymt of the ppal moys or intt hby seed, or any pt throf, or exercisg, enforeg, or pursuing any powers, remedies, or means for that ppose.

[5. *Attornment clause*, p. 75.]

IN WITNESS, &c.

XIV.

MORTGAGE to TRUSTEES of a WILL with the consent of the COURT given in an ADMINISTRATION ACTION (b).

PARTIES, as in *Prec. I.*, p. 83.

Recitals.
Agree-
ment for
loan sub-
ject to
approval
of Court.

Recite title of mtgor, p. 7, f. 1; AND WHAS subjt to the approval of the Chancery Division of the High Court of Justice in the action *Re X*, deed, *F. v. G.* (*add reference to record*) for the administron of the este of the sd X., the mtgees, as trees of the will dated, &c., & proved, &c., of the sd X., have agrd with the borr to advance to him the sum of £—— forming pt of the residuary este of the sd X., upon having, *continue as at* p. 10, f. 1.

Order of
Court.

AND WHAS by an Order of the sd Chancery Division made by Mr. Justice —— on the —— day of —— in the action afd, the Judge being of opinion that it wd be for the benefit of the psons interested in the sd residuary este that the sd advance shd be made & that a mtge of the ppty hby mtged was a fit & pper mtge on wch to advance the sum of £——, & that a good title had been made to the sd ppty, & that a mtge thrin mentioned (being this deed), identified by the signature of one of the Masters attached to the Chambers of the sd Judge in the margin throf, was a pper mtge of the sd ppty, & that the borr was the pper pson to execute such mtge & to receive the sd mtge moy of £——, it was ordered that on the execution of this deed by the borr the mtgees shd advance to him the sum of £——.

(b) It is assumed in this Precedent that the order was not drawn up until the title had been approved. Sometimes, however, an order is made sanctioning the investment if a good title is shown: see *Seton*, 7th ed., 1138; and in this case the recitals would require modification.

NOW THIS DEED made in obedience to the sd order & for effectuating the sd mtge & in conson, &c., WITNESSETH as follows : *continue as in Precs. I., III., or IV., with variations for mtge to trees.* Wit-
nesseth.

IN WITNESS, &c.

XV.

MORTGAGE of FREEHOLDS and LEASEHOLDS settled in STRICT SETTLEMENT by a TENANT for LIFE (*who covenants for payment*) for raising MONEY required for PAYMENT for an AUTHORISED IMPROVEMENT for EQUALITY of EXCHANGE or for DISCHARGING an INCUMBRANCE on SETTLED LAND under his SETTLED LAND ACT powers (a).

(a) A tenant for life, as defined by s. 117 (1) (xxviii) which definition includes the limited owners having the powers of a tenant for life under s. 20 of the S. L. Act, under any settlement past or future, is empowered by s. 71 to raise money required for the purposes mentioned in the section, including payments for improvements authorised by the Act, equality of exchanges extinguishment of manorial incidents, and compensation to the steward in connection therewith, commutation of payments and satisfying claims for compensation arising out of the statutory conversion of perpetually renewable leaseholds into long terms, and discharging in whole or in part incumbrances on the settled land, *Re Clifford*, [1902] 1 Ch. 87, not being a terminable charge, on the settled land or part thereof, and for payment of the amount properly required for the costs of the transaction, by mortgage thereof or any part thereof, for the estate or interest vested in him by the last or only vesting instrument or for any less estate or interest in the manner requisite for giving effect to the mortgage, which must be either by demise for a term of years or by charge by way of legal mortgage : s. 72 ; see also ss. 95, 110, protecting mortgagees dealing with the tenant for life in good faith. The statutory powers may be exercised by the tenant for life from time to time as occasion requires : Interpretation Act, 1889, s. 32 (1). Powers of mortgaging of tenants for life under S. L. Act.

By s. 71 the money raised is to be capital money (as to which, see s. 117 (1) (ii)), and by s. 75 is to be paid either to the trustees of the settlement (as to whom see ss. 30 and 34, whose receipt is a good discharge (s. 95), or into court, at the option of the tenant for life ; but by s. 94 it is not to be paid to fewer than two trustees unless this is authorised by the settlement or the Public Trustee or a trust corporation, is the sole trustee : *Re Leslie*, [1911] 1 Ch. 611 ; *Re Ardagh*, [1914] 1 Ir. R. 5. See also s. 101, as to giving notice to the trustees of the intention to make the mortgage, though a person dealing in good faith with the tenant for life is not concerned to enquire respecting the giving of any such notice. Sub-section (2) of s. 101, providing that the notice may be notice of a general

Parties. *PARTIES*, A., tenant for life (hrinar called the borr, defined as in *Prec. XI.*, p. 99), 1 ; B. & C., trees (hrinar called the trees (b)), 2 ; C., mtgee (hrinar called the mtgee), 3.

Recitals. WHAS this mtge is suppl to a settlement [trust instrumt]
Title. dated, &c., & made, &c., by virtue of wch the borr is tenant for

life of the freehd & leasehd ppty hby mtged [if the power to mtge was by the settlemt vested in the trustees set out the power here (c)]
AND WHAS by a vesting deed dated, &c., & made, &c., the ppties hby mtged were vested in the borr in fee simple and for the unexpired residue of the term subsisting thrin respevely [free from incumbs] upon the trusts of the sd settlemt [trust instrumt] or such of the same as were then subsistg & capable of takg effect & the sd B. & C. were thrin named as the trustees for the ppses of the S. L. Act, 1925, of the settlement. AND

Purpose for which loan required. WHAS the sum of £—— is required for the payment for certain improvments to the sd settled este authorised by the sd Act

intention, does not apply to mortgages, as to which specific notice must therefore be given within the meaning of *Re Ray*, 25 Ch. D. 464. See further on the Acts, *post*, SETTLEMENTS.

Tithe rent-charge. Limited owners may charge consideration money and expenses of redemption of tithe rent-charge under the Tithe Acts, see the Tithe Act, 1846 (9 & 10 Vict. c. 73), s. 11, amended by the Tithe Act, 1918, s. 5.

As to the power of tenants for life to borrow money for redemption of extraordinary tithes, and to charge the inheritance with the repayment, see the Extraordinary Tithe Redemption Act, 1886, s. 6.

The modes of application of capital money specified in s. 73 of the S. L. Act include the purchase of an annuity charged on settled land or any part thereof under the Tithe Act, 1918, s. 4, or in the discharge of such part of such annuity as does not represent interest.

Leasehold enfranchisement. It was held in *Re Clifford*, [1902] 1 Ch. 89, that a tenant for life could under s. 18 of the S. L. Act, 1882, mortgage the settled land to raise money to purchase the freehold reversion of settled leaseholds. Section 71 of the Act of 1925 does not mention enfranchisement of any kind, but capital money may be expended in the purchase of the freehold reversion of settled leaseholds under s. 73 (1) (x).

(b) The trustees are made parties to acknowledge the receipt of the money ; otherwise their concurrence would be unnecessary.

Mortgagees of the life interest of the tenant for life, or of the interest of a remainderman, are not necessary parties to a mortgage of the fee : S. L. Act ; and see *Re Dickin & Kelsall*, [1908] 1 Ch. 213 ; *Re Davies Kent*, [1910] 2 Ch. 35.

Trustees' mortgaging powers. (c) Any power not being merely a power of revocation or appointment relating to settled land conferred by a settlement on the trustees or other persons exercisable for any purpose whether or not provided for in the Act, shall be exercisable by the tenant for life or statutory owner as if it were an additional power conferred on him within s. 109 which permits the extension of the statutory powers : s. 108 (2).

[or "for equality of exchange" or "for discharging an incumbrance on certain ppty" as the case may be] now vested in the borr upon the trusts of the settlemt. AND WHAS the borr by virtue of the powers vested in him under the S. L. Act, 1925, has determined to raise the sd sum for the ppose afsd & the mtgee has agrd to advance the same upon having the repaymt throf with intt at the rate hrinar mentd seed in mner hrinar appearing. NOW THIS DEED made in psuance of the sd agrmt & in conson of the sum of £—— now pd to the trees as such trees as afsd at the reqt of the borr (the paymt & receipt whrof in mner afsd the borr & the trees hby resply acknowledge), WITNESSETH as follows :—

Agree-
ment for
loan.

Wit-
nesseth.

1. *Covenant by borr to pay ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The borr as tree by virtue of the powers vested in him under the S. L. Act, 1925, & of every other power in this behalf him enabling hby demises (d) unto the mtgee, First *Freehd parcels*. Secondly *pcels in full from lease*, by reference in both cases to the Schedule. To HOLD the sd freehold ppty unto the mtgee for the term of 1000 yrs from the date hrof witht impeachmt of waste & the sd leasehd ppty (x) as *in habendum*, p. 23, f. 2; *Proviso for redmon*, p. 24, f. 1.

Demisc.

3. The borr hby covts with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Clause negativing personal liability of trustees, saying* : "against the trees or either of them," p. 28, f. 3.

(ii) As between the borr & the mtged premes the mtged premes shl be the primary secy for the moys hby secured, but this provision shl not affect the mtgee or his right to resort to & enforce his several securities & remedies for recovery of the moys hby seed agnst the sd premes or the borr psonally in such order or mner as he may think fit.

(iii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(iv) *Covenant against registron of freehds, if required*, p. 45, f. 10.]

(v) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

[4. *Attornment clause*, p. 75.]

(d) Or, "Hby charges by way of legal mtge ALL, &c., with paymt to the mtgee of the ppal money intt & other moy hby covtd to be pd by the borr," omitting proviso for redemption.

(x) See *ante*, p. 89, note (a).

[5. *Acknowledgmt & undertaking as to deeds*, Vol. I., p. 515, adding: "And it is hby agrd that so long as any rt of redmon shl subsist under this deed all costs & expses incurred by either party of or incidental to the performce of any obligon imposed by the acknowledgmt hrinbfe contd shl be pd by the borr & that all costs incurred by the mtgee shall be deemed to be pperly pd by him" (e).]

IN WITNESS, &c.

[*Schedule of properties.*]

[*Schedule of deeds.*]

XVI.

MORTGAGE of a POLICY of ASSURANCE effected by the MORTGAGOR on his own LIFE (a), a SURETY joining. VARIATIONS where the POLICY is effected in the MORTGAGEE'S NAME and for SEVERAL POLICIES (b).

PARTIES as in Prec. VIII., p. 94, omitting the definition of the borr.

Recitals. *Recite title to poly*, p. 8, f. 6; *agrmnt for loan*, p. 10, f. 1; that

(e) A mortgagee who does not obtain possession of the title deeds is a puisne mortgagee only. A tenant for life can hand the title deeds to the mortgagee: *Wiseman v. Westland*, 1 Y. & J. 117; subject to the right of the remaindermen to have them brought into court in case of danger: *Jenner v. Morris*, L. R. 1 Ch. 603. In exceptional cases it may be considered safe, owing to the standing of the mortgagor, to leave the title deeds in his possession, and the mortgage should then be registered as a land charge, see *ante*, p. 92. The deeds may be deposited in neutral custody, see, *post*, *Prec. XCI.*, p. 265.

The proviso at the end of the form is necessary: see L. P. Act, 1925, s. 64 (5), (13).

(a) It has been suggested on the authority of *Smith v. Smith*, [1891] 3 Ch. 550, that a mortgagee of a policy of life assurance is entitled to six months' notice before being paid off on the policy maturing. This view appears to be incorrect: see *post*, p. 324.

A life policy does not become void on the assured becoming an alien enemy: *Seligman v. Eagle Insurance Co.*, [1917] 1 Ch. 519.

(b) Notice of this mortgage, unless the policy is in the name of the mortgagee, must be given to the Assurance Office under the Policies of Assurance Act, 1867, and, before completion, enquiry should be made from them whether they have notice of any charge on the policy.

The same Act enables an assignee to sue in his own name provided that (1) the policy has been actually assigned to him, and (2) a written notice of the date and purport of the assignment is given to the Assurance Office

surety shl join, p. 11, f. 8; *surety independently advised*, p. 11, f. 9.

NOW THIS DEED made in psuance of the sd agrmt & conson & receipt clause, p. 14, f. 1, WITNESSETH as follows :

1. *Joint & several covenant for paymt of ppal & intt & intt after default*, p. 18, f. 4, & p. 17, f. 2. Wit-
nessest.

2. The borr as benefl owner hby assns unto the mtgee ALL THAT poly (c) of assee effected in the — Assurce Socy in the name of the borr, payable on the death of the borr dated, &c., numbered, &c., for the sum of £—— & under the annual premium of £—— & the sd sum of £—— assured thby & all bonuses, additions, & moys to become payable under the sd poly & the full benefit throf; To HOLD UNTO the mtgee, subjt to the proviso for redmon hrinar contd; *Proviso for redmon*, p. 26, f. 2.

3. The borr & the surety hby jtly & severally covt with the mtgee: AND IT IS HBY AGRD & DECLARED AS FOLLOWS (d):—

at their principal place of business: ss. 1 & 2; Withers on Reversions, 182.

As to the lien of a person, not being sole beneficial owner, for premiums paid by him on a policy, see *ante*, p. 39, note (f); and as to the importance of stamping the assignment at once, see Stamp Act, 1891, s. 118; 33 Sol. J. 3. Stamp.

A policy of assurance effected under the Friendly Societies Acts is assignable otherwise than by nomination under the Acts: *Re Griffin*, [1902] 1 Ch. 135. Policies
by
Friendly
Societies.

The variations where the policy is effected in the mortgagee's name will be as follows:—*Recite agrmt for loan*, p. 10, f. 1; AND WHAS in psuance of the sd agrmt & in conson of the sum of £—— now pd to the borr by the mtgee, the rect whrof the borr hby acknowes, the borr has effected a poly, *continue recital of title to poly in name of mtgee*, p. 8, f. 7. *Clause 2 of the deed will be the mtgee hby covts with the borr that if the borr or his assns, continue proviso for redmon*, p. 26, f. 2, *saying*, “ assn the poly of assurce hrinbfe recited to have been effected.” The remaining clauses will be as in the text. Varia-
tions
where
policy is
effected
in mort-
gagee's
name.

(c) For several policies say, “ ALL THOSE several pols of assurce in the name & on the life of the borr, the parlars whrof. showing the offices in wch the same resply were effected, & the sums assured thby, & the dates & numbers throf & the premiums payable in respt throf, are contd in the schdle hto, & all moys assured by or to become payable under such respective pols.”

(d) If desired, a receipt clause and a declaration of trust of money received

- (i) *Provision for reduction of intt or periodical payment*, p. 2, f. 1.
 - (ii) *Proviso limiting surety's liability*, p. 35, f. 6.
 - (iii) *Covt by mtgor & surety to keep up policy with subsidiary clauses*, p. 37, f. 1, or p. 40, f. 2, with variation of f. 1A on p. 39, if required.
 - (iv) *Covenant to produce evidence of mtgor being alive*, p. 35, f. 7.
 - (v) *Provision as to primary liability between mtgor & surety*, p. 35, f. 3.
 - (vi) *Declaration that surety shd be liable as a ppal debtor*, p. 45, f. 4.
 - (vii) *Power to surrender policy*, p. 61, f. 12.
 - (viii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.
- IN WITNESS, &c.

[The Schedule above referred to.]

XVII.

MORTGAGE of a LIFE INTEREST (a) in REAL ESTATE and a POLICY of ASSURANCE on the MORTGAGOR'S LIFE, effected in his own name (b).

PARTIES, as in *Precedent*, p. 83, but omitting the definition of the borr.

in respect of the policy, p. 70, f. 2, and p. 71, f. 4, may be inserted after the power to surrender the policy; but these clauses appear to be unnecessary; see *ante*, p. 70, note (a).

(a) Life interests in land are under s. 1 of the L. P. Act, 1925, equitable interests only, and are not within the provisions of s. 85 which requires mortgages of legal estates in freeholds to be by demise or by charge by way of legal mortgage. The Act nowhere lays down any form for mortgages of equitable interests in land so that the old practice of assigning the mortgaged property subject to reconveyance on redemption will still be proper. The priorities of mortgages of equitable interests in land, including capital money and securities representing capital money are by s. 137 (1) regulated by the old rules applicable to mortgages of equitable choses in action, *i.e.* by notice. By sub-s. (2) (i) of that section, notice of a mortgage of an equitable interest in settled land must be given to the trustees of the settlement, and where the equitable interest is created by a subsidiary or derivative settlement to the trustees of that settlement. The receipt of

(b) For variations where the policy is effected in the mortgagee's name, see the last *Precedent*. The premium payable on the policy cannot be deducted from the estimate of the mortgagor's income for the purposes of super tax: *Earl Howe v. I.R. Commissioners*, [1919] 2 K. B. 336.

WHAS under the will dated, &c., & proved, &c., of X. who died on or "under a settlemt [trust instrumt] dated, &c., & made, &c.," the borrh is beneficially entitled as tenant for life in posson throf [witht impeachment of waste] to the ppty mentd in the schdle hrtto AND WHAS by a vesting deed, dated, &c., and made, &c., the sd ppty was conveyed to the borrh or tenant for life in posson upon the trusts subsistg under the sd will or settlemt [trust instrumt] & X. & Y. were thrin named as the trustees for the ppses of the S. L. Act, 1925 of the sd settlemt ; *Title to poly*, p. 8, f. 6 ; *agrmnt for loan*, p. 10, f. 1.

Recitals.

NOW THIS DEED made in psuance of the sd agrmt & conson & receipt clause, p. 14, f. 1. WITNESSETH as follows :

Wit-
nessest.

1. *Covenant for pymt of ppal & intt & intt after default*, p. 15, f. 1, or p. 17, f. 2.

2. The borrh as benefl owner hby assns unto the mtgee : First, ALL THAT the annual income to arise during the life of the borrh from the ppty set out in the schdle hto (c). AND SECONDLY, *Parcels, see Prec. XVI.*, p. 111. To HOLD THE SAME UNTO the mtgee from the date hrof durg the life of & for all other the este & intt (if any) of the borrh in the sd premes subjt to the proviso for redmon hrinar contd. *Proviso for redmon*, p. 26, f. 2, saying "reassure all the premes hby assigned, unto the borrh."

Assign-
ment.Assign-
ment of
policy.

the notice affects the trustees in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose. To be effective the notice must be in writing : sub-s. (3). The remaining sub-sections of s. 137 deal with the position when there are no trustees or no trustees to whom a valid notice can be given, and with the custody of a notice served on one trustee only. The section does not affect any priority acquired before the 1st of January, 1926 : sub-s. (7). The settlement or other instrument creating the trust may nominate a trust corporation to receive notices, as to the effect of which see s. 138. By s. 2 (1) of the L. R. Act, 1925 a life interest in land is incapable of registration under that Act.

A mortgagee of a life interest is not entitled to possession of the title deeds relating to the settled land, but has the same rights thereto as if the mortgagor tenant for life had given him a statutory acknowledgment for production and delivery of copies and an undertaking for safe custody : S. L. Act, 1925, ss. 111, 117 (1) (xxi).

Custody
of title
deeds.

(c) In assignments of life interests made after the 31st December, 1925, the assignee is entitled to the like interest in land, money, or securities for the time being representing the settled property at the date the assignment as he had in the settled property itself : S. L. Act, 1925, s. 104 (4) (a).

3. The borrr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

- (i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.
- (ii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5 (a).
- (iii) *Covenant to keep up policy*, p. 37, f. 1, or p. 40, f. 2.
- (iv) *Power to sell policy by way of surr*, p. 61, f. 12.
- (v) *Powers for protection of equitable securities*, p. 46, f. 11.
- (vi) *Charge of mtgee's expenses with intt*, p. 74, f. 11.
- (vii) No investmt or applicon of capital moy for the time being affected by this deed shl be made wtht the consent of the mtgee except investmts in secies authorised by law for the investmt of trust funds (b).

IN WITNESS, &c. (c).

Schedule.

(a) A tenant for life without impeachment for waste and under no liability to insure, is entitled as against the trustees of the settlement to any moneys payable under any insurance effected by him on his own account: *Seymour v. Vernon*, 16 Jur. 189; *Warwicker v. Bretnall*, 23 Ch. D. 188; *Gaussen v. Whatman*, 93 L. T. 101; *Re Bladon*, [1911] 2 Ch. at p. 354; but consider *Re Quicke*, [1908] 1 Ch. 887.

Leasing
powers of
tenant for
life.

(b) See s. 104 (4) (b) of the S. L. Act, 1925. By sub-s. (c) of the same sub-section, notice of any intended transaction must be given to the assignee unless the assignment otherwise provides.

When an assignment for value is made or comes into operation after the 31st December, 1925, the consent of the assignee is not necessary for the exercise by the tenant for life of any of his statutory powers, but the above-mentioned notice must be given unless the mortgage otherwise provides: S. L. Act, 1925, s. 104 (4). Where an assignment for value was made before the 1st January, 1926, except where the assignee is actually in possession of the settled land or the part thereby affected, the consent of the assignee is unnecessary for the making of leases by the tenant for life if the leases are made at the best rents that can be obtained without fine, and are otherwise in conformity with the Act. In exercising his statutory powers the tenant for life must have regard to the interests of all parties entitled under the settlement and is a trustee for them: s. 107 (1). A mortgagee of a life interest has all the same rights and remedies as if the life interest had been a legal estate and the reversion on any leases or tenancies derived out of the settled land had been vested in him: ss. 111, 117 (1) (xxi).

A mortgagee not in possession at the death of the tenant for life is not entitled to an apportionment of the incoming rent: *Re Marquis of Anglesey*, L. R. 17 Esq. 283.

(c) Notice must be given to and enquiries made from the insurance office or offices: see *ante*, p. 110, note (b).

XVIII.

MORTGAGE of a LIFE INTEREST in PERSONALTY and of
POLICIES (a) on the LIFE of the MORTGAGOR.

PARTIES, as in Prec. I., p. 83, omitting the definition of the borrr : Recitals.
 WHAS under a settlemt dated, &c., & made, &c., in conson of the
 marre shortly afterwards solemnised betn the borrr & M., or as the
 case may be, & by certn transfers & paymts made previously
 or subseqtly to the sd settlemt, certn ppty thrin mentd became
 vested in the trees throf Upon trusts for investg & transposg
 the investmts throf resply, & subjt thto for paymt of the
 income throf, & of the investmts throf resply to the borrr &
 his assns durg his life ; AND WHAS the ppty now subjt to the
 trusts of the sd settlemt consists of the ppty, the parlars
 whrof are specified in the first schdle hto, wch is now vested
 in X. & Y., the psnt trees of the sd settlemt ; *Recite title*
to policies, p. 8, f. 6 ; Agrmt for loan, p. 10, f. 1 ; NOW THIS
 DEED made in psuance of the sd agrmt & conson & receipt
 clause, p. 14, f. 1. WITNESSETH as follows : Invest-
 ment of
 trust
 funds.

1. *Covenant for paymt of ppal & intt & intt after default, p. 15,
 f. 1, & p. 17, f. 2.*

2. The borrr as benefi owner hby assns unto the mtgee : First,
 ALL the income which shl arise durg the life of the borrr from the
 ppty specified in the first schdle hto, & from all other (if any) the
 ppty subjt to the trusts of the sd settlemt & every pt throf &
 from the investmts from time to time representg the same or
 any pt throf (b), and Secondly, *Parcels for polys, see Prec. XVI.,*
p. III, note (c) ; To HOLD all the same premes UNTO the mtgee,
 subjt to the proviso for redmon hrinar contd ; *Proviso for*
redmon, p. 26, f. 2. Wit-
 nesseseth.

Assign-
 ment.

(a) It is thought that all insurance companies are now carrying on business
 under private Acts or some other form of constitution which enable them to
 hold as mortgagees policies issued by themselves as insurers. Where this
 is the case there are no estate trustees, and the policies can be assigned
 direct to the mortgagee companies. Mortgage
 to insur-
 ance com-
 pany.

(b) If the mortgagor takes a determinable life interest in the wife's
 fortune add, "except from any ppty for the time being subjt to
 the trusts declared by the sd settlemt concerning the wife's
 fortune."

3. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED (*bb*) AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covenant to keep up policies*, p. 37, f. 1, or p. 40, f. 2 (*c*).

(iii) *Powers for protection of equitable secy*, p. 46, f. 11.

(iv) *Power to sell policies by way of surr*, p. 61, f. 12.

(v) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

Proviso
as to
mort-
gagor's
powers
under
settle-
ment (*d*).

(vi) Provd always that durg the continuance of this secy the borr shl not exercise or concur in or consent to the exercise of the powers of advancemt or withdrawal from the sd settlemt of any pt of the funds now subjt to the trusts throf, or of the power of varying investmts thrin contd witht the written consent of the mtgee.

IN WITNESS, &c. (*e*).

Schedules.

(*bb*) It may be thought desirable to insert a declaration in the form given in the 9th edition of this work, Vol. II., p. 110, to the effect that the income should be paid to the mortgagee on demand, and that until demand it should be paid to the mortgagor. Such a declaration would merely state what the law implies. Notice to the trustees by the mortgagee is not equivalent to a demand for payment of income: *Re Pawson's Settlement*, [1917] 1 Ch. 541.

Covenant
to keep
up poli-
cies on
mortgage
to insur-
ance
office.

(*c*) Where the mortgage is to the issuing office substitute here :—“ The borr hby covts with the Co duly to pay every premium or sum of moy wch from time to time durg the continue of this secy may be or become payable for keepg on foot the sd policies & to make each such paymt within three days after the first day on wch it becomes payable : and every such premium or sum wch shl not be so pd within three days as afsd, shl carry intt to be computed from the first day on wch it becomes payable, & to be payable yrly at the rate of £6 p.c. p.a. & shl, with such intt thron as afsd, be a charge upon the premes hby assnd : PROVD ALWAYS that while any intt on the sd ppal sum shl be in arrear, the Co shl not be obliged to receive the premium for the time being payable on the sd policies, & may apply any moys pd to them in resp of such premium in or towards paymt of the intt so in arrear.

(*d*) The usual power of a tenant for life to consent to an advancement in favour of children entitled in remainder cannot be exercised to the prejudice of his incumbrancer; *Vaizey* 1051.

Notices
and en-
quiries.

(*e*) Enquiries must be made from and notice must be given to the trustees of the settlement and to the insurance offices; see *ante*, p. 110, note (*b*), and L. P. Act, 1925, s. 137 (3) to (8). As to enquiries from trustees with

XIX.

MORTGAGE by EQUITABLE TENANT IN TAIL in REMAINDER creating a BASE FEE or an interest equivalent to a BASE FEE (a) for securing a sum of MONEY payable in a certain CONTINGENCY to the TRUSTEES of an INSURANCE COMPANY. COVENANT by MORTGAGOR when in POSSESSION to execute FULL DISENTAILING ASSURANCE.

PARTIES, A., mtgor (hrinar called the borr), 1; *Insc Co.* (hrinar called the mtgees) 2. *Recite will of Y. under wch A. is tenant in tail in remr after the death of X. & contingently on the failure of the latter's issue male of the scheduled ppty*: AND WHAS the sd X. is of the age of — yrs & has never had any issue: AND WHAS the borr has agrd with the mtgees in conson of £—— to be pd to him out of moys belongg to them on a joint acct, to secure in mner hrinar appearg, if the sd X. shl die in the lifetime of the borr witht leavg issue male & witht having had issue male who attained the age of twenty-one yrs, the paymt to them at the expiron of one calr month from the death of the sd X. as afsd of the sum of £—— with intt thron at the rate of £—— p.c. p.a., from the death as afsd of the sd X. until paymt of the ppal; AND WHAS the sd ppty [stocks, shares investmts & secies] set out in the schedle hereto is [are] now vested in the sd X. as tenant for life in posson thereof under the sd will [—— & —— as the present trees of the sd will omitting the next succeeding

Parties.

Recitals.

Will.

Agreement for loan.

regard to incumbrances, and the duty and responsibility of trustees in respect of answering such enquiries, see *Low v. Bouverie*, [1891] 3 Ch. 82; *Porter v. Moore*, [1904] 2 Ch. 367; and see *Nocton v. Ashburton*, [1914] A. C. at p. 950. As to the duty of trustees to inform the *cestui que trust* how the trust property is invested, see *Re Dartnall*, [1895] 1 Ch. 474. As to notice where there is a sub-settlement, see *Stephens v. Green*, [1895] 2 Ch. 148. It may be desirable to place a distringas on the funds: see *post*, p. 126, note. As to the importance of stamping the assignment of the policy at once, see Stamp Act, 1891, s. 118; 33 Sol. J. 3.

(a) An entailed interest in land is an equitable interest only: L. P. Act, 1925, s. 1. Section 130 (1) permits the creation of a similar interest in personality with the like results including the right to bar the entail either absolutely, or to create an interest equivalent to a base fee. The Act does not affect the creation or enlargement of base fees or interests equivalent to base fees under ss. 15, 24, 38, 39 40 and 41 of the Fines & Recoveries Act, 1833. Enrolments of disentailing deeds are abolished by s. 133. Notice of this mortgage should be given to the trustees of the settlement, see *ante*, p. 112. The interest of an infant tenant in tail in remainder cannot be mortgaged for his maintenance: *Re Hambrough*, [1909] 2 Ch. 620.

As to

base fees.

reference to the trees] & — & — are the present trees for the ppes of the S. L. Act, 1925, of the settlemnt subsisting under the sd will; *Recite issue policy effected in name of mtgees*, p. 8, f. 7: NOW THIS DEED made in psuance, *conson & receipt*, p. 14, f. 1, WITNESSETH as follows:—

Wit-
nesseth.

Covenant
for pay-
ment.

1. The borr hby covts with the mtgees to pay to them at the expiron of one calr month from the death of the sd X. if he shl die without leaving issue male and without having had issue male who attained the age of 21 years (b) in the lifetime of the borr the sum of £—— with intt thron at the rate of £—— p.c. p.a., such intt to commence from the day of the death as afsd of the sd X.: AND ALSO to pay to the mtgees if the sd moy shl not be so pd so long as any ppal moy remains due under this deed after the expiron of one calr month from the day of the death as afsd of the sd X., intt thron at the rate afsd by eql half-yrly paymts, the first of such paymts to be made at the expiron of seven calr months from the day of the death as afsd of the sd X.

Assign-
ment.

2. The borr, as **benefl owner**, hby assns unto the mtgees: ALL the interest of the borr in the freehd & leasehd manors, messes, lands, & ppty, the short parlars whrof are contd in the schdle hto, & all other (if any) the manors, messes, lands, & ppty, now subjt to the limitations & trusts for the time being subsistg under the will of the sd Y. (c) [stocks shares investmts & secies mentd in the schdle hrto & the investmts for the time being representing the same]. AND ALL other if any the intt or intts to which the borr is or may become entitled under the sd will: To HOLD the same UNTO the mtgees absolutely subjt to the lifeintt of thesd X., & the intts of his issue male under thesd will, & also subjt to the charges prior to & to all powers overreaching the intt in tail male of the borr, under the sd will but discharged so far as may be from the sd intt in tail male of the borr, & all other intts in tail male or in tail of the borr, & all other estes & intts to take effect after the determon or in defeasance throf, subjt nevertheless to the proviso for redmon hrinar contd:

Haben-
dum.

Dis-
charged
from
estate
tail.

(b) Unless the mortgagor has numerous male issue, a policy against his death before the expiration of one month after the death of X. should be included in the security. If the mortgage is not made to an Insurance Company a fully paid-up issue policy should also be taken out and included in the security.

(c) All investments of capital money devolve as land under the instrument creating the settlement: S. L. Act, 1925, s. 75 (5).

PROVD ALWAYS, that on paymt to the mtgees at the expiron of one calr month from the day of the death of the sd X. in the lifetime of the borr witht leaving issue male & witht having had issue male who attained the age of twenty-one yrs of the sum of £—— with intt thron calculated from the day of such death at the rate afsd, the premes hrinbfe assignd shl at the reqt & cost of the borr, or the psons derivg title under him, be duly re-assignd to him or them.

Proviso
for re-
demp-
tion.

3. The borr hby covts with the mtgees AND IT IS HBV AGREED & DECLARED as follows :

Covenant
to enlarge
base fee.

(i) That within seven days after the death of the sd X. in the lifetime of the borr, without leaving issue male and without having had issue male who attained the age of 21 yrs, he the borr will at his own cost & to the satisfon of the mtgees, duly exte & cause to be orwise perfected a pper assuree (a) or pper assures, by way of disentail of, & so as thby to confirm this deed & vest the same premes in the mtgees, for the whole intt thrin wch the borr can give or by way of mtge dispose of, subjt to the hrinbfe mentd prior charges & over-reaching powers, but discharged from all intts in tail male or in tail of the borr, & all estes & intts to take effect after the determon, or in defeasance of any such intt in tail male or in tail, & so as to be subjt to the rt of redmon for the time being subsistg under this deed (b).

(ii) That in default of such assuree or assures havg been duly exted & perfected within such seven days as afsd, the attys & atty for this ppose hrinar appted may by virtue of the power of atty hrinar contd in the name & on behalf of the borr, exte & procure to be perfected such pper assuree or assures as afsd, & that all costs & expenses incurred by them of or incidental to the preparon & complon of such assuree or assures, & the perfectg throf, with intt thron as hrinar mentd shl be deemed to be pperly incurred by the mtgees, &c., *continue charge of mtgee's expenses with intt*, p. 74, f. 11.

Power
to mort-
gagees
to do so.

(iii) The borr hby irrevocably nominates & appts the mtgees

Power of
attorney.

(a) Section 176 (1) of the L. P. Act, 1925, allows a tenant in tail in possession to devise or bequeath his entailed interest except where restrained by statute from disentailing, as in the unusual cases mentioned in s. 176 (2). Such devise or bequest operates as a disentailing assurance.

(b) Sometimes a form of the deed to be executed under this covenant or the power of attorney, is given in a schedule, to save time, and to avoid any question as to its being in proper form. As to making the power irrevocable, see L. P. Act, 1925, s. 126. See also Vol. I., p. 205.

& their assns (c) to be the attys & atty of him the borrr for him & in his name & on his behalf, & as his act & deed, to sign, seal, & deliver, & orwise perfect any deed or deeds, or other assurances by way of disentail, for the ppose of assigning all his interest in the sd premes, & vestg the same in the mtgees, or other the psons or pson entitled to the moys for the time being due on this deed for the whole intt thrin wch the borrr could give or by way of mtge dispose of, but subjt to the hrinbfe mentd prior charges & overreachg powers, but discharged from every entailed intt of the borrr, & all estes & intts to take effect after the determ on or in defeasance of any such intt in tail male or in tail, & so as to be subjt to the rt of redmon for the time being subsistg hrunder.

IN WITNESS, &c.

The Schdle above referred to.

XX.

MORTGAGE of a REVERSION in FEE (a) by way of INDEMNITY to a PERSON who has become SURETY for the MORTGAGOR. POWER of SALE with the CONCURRENCE of the TENANT for LIFE. COVENANT for PRODUCTION of DEEDS. VARIATIONS for a SHARE (b) of a REVERSION.

Recitals.
Will.

PARTIES, as in Prec. I., p. 83, omitting the definition of the borrr.
WHAS under the will of L., dated, &c., & proved, &c., the sd A. is entitled to [one equl undivided share [& may in certain events become entitled to a further share or shares] of] the equitable reversion in fee simple expectant on the death of K., *tenant for life*, in [the proceeds of sale & rents & profits until sale of] the ppty hrinar mentd, *or recite the will, &c., under wch the mortgagor's title arises, at length ; Joint & several bond of mtgor & mtgee to the — Bank, to secure the balance due from mtgor on an acct*

(c) See L. P. Act, 1925, s. 128.

(a) A reversion in fee simple is an equitable interest in land only : L. P. Act, 1925, s. 1. Notice of this deed should be given to the trustees of the settlement, see *ante*, p. 112.

(b) A disposition after the 31st of December, 1925 purporting to settle land in undivided shares, operates as a settlement of a corresponding share in the proceeds of sale of the land and the rents and profits until sale : L. P. Act, 1925, s. 34 (4) : the land itself being held on the statutory trusts declared by, s. 35.

current with the Bank, settg out the condon fully, see Vol. I., p. 454. Recite vesting deed assuring ppty to K. on trusts thrin declared by reference to will, adding: "& ——— & ——— were in the sd deed stated to be the trees of the settlemt for the ppses of the S. L. Act, 1925," [for land held on trust for sale say "in ——— & ——— as the present trees of the sd will, omitting the next preceeding reference to the trustees] AND WHAS the mtgee entered into the sd bond as surety only for the borrr, & upon an agrmt that for the ppose of indemnifyg the mtgee, his exs, & ads, in respt of his & their liability under the sd bond, the borrr shd enter into the covts & execute the seey hrinar contd: NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes, WITNESSETH as follows:

Agree-
ment to
indem-
nify
surety

Wit-
nesseth.
Covenant
to pay.

1. *Covenant for paymt on demand*, p. 20, f. 10, of, "all & every sum & sums of money weh shl be recovered from him by virtue of the sd bond, & all costs, charges, & expenses weh he shl incur or sustain by reason or in consequence of the sd bond or the suretyship effected thby or orwise in respt of the premes with intt thrn until paymt at the rate of £—— p.c. p.a., &c., & intt after default, *ibid*."

2. The borrr as benefl owner hby assns unto the mtgee ALL THAT [undivided ——— pt or share, *where the mtgor is contingently entitled to other shares*, add, "& all & singr other the share or shares, este rt & intt whatsr to weh the borrr now is or may hrafter become entitled in reversion, remr, or orwise under or by virtue of the sd will of the sd L.," of & in the proceeds of sale of], *Parcels*, Vol. I., pp. 480 *et seq*. To HOLD UNTO the mtgee, subjt to the life intt thrin of the sd K., *tenant for life*, & to the proviso for redmon hrinar contd; *Proviso for redmon*, p. 26, f. 2, of, "the sd premes hby assigned" "on payment psuant to the covt hrinbfe contd to the mtgee of all moys hrinbfe covted to be pd."

Parcels.

Haben-
dum.

3. The borrr hby covts with the mtgee, AND IT IS HBY AGRD DECLARED AS FOLLOWS:—

- (i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.
- (ii) *Covenant to repair & insure*, "after the death of the sd K.," *tenant for life*, p. 40, f. 4, or p. 43, f. 5 [omit this clause if *mtgee of undivided share*].

[(iii) *Covenant agst registron (c) if required*, "after the death

(c) An undivided share in land cannot be registered: L. R. Act, 1925, s. 2 (1).

of the sd K.,” *tenant for life*, of “the ppty hby mtged,” p. 45, f. 10.]

(iv) *Clause excluding* s. 103 of L. P. Act, 1925, p. 61, f. 8.

(v) *Addition to power of sale*, p. 61, f. 9.

(vi) *Powers for protection of equitable security*, p. 46, f. 11.

[(vii) *Power to pass accts of prior incumbrancers*, p. 47, f. 12.]

(viii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

IN WITNESS, &c. (d).

XXI.

MORTGAGE of a vested REVERSION of PERSONALTY,
INTEREST being ACCUMULATED till the REVERSION falls
in (a).

Recitals. *PARTIES as in Prec. I.*, p. 83, omitting the definition of the borr.
WHAS under a settlmt dated, &c., & made, &c., & a deed poll

(d) Notice of this mortgage must be given to the trustees to obtain priority, see *ante*, p. 112.

Stamp. This mortgage, though by way of indemnity only, is chargeable with *ad valorem* stamp duty: *Lord Canning v. Raper*, 1 El. & Bl. 164; but under the Stamp Act, 1891, s. 88 (2), the stamp need not be affixed until some money actually becomes due under the mortgage.

As to estate duty, see note, Vol. I., pp. 90, 91.

For a form of statutory declaration by a mortgagor of a reversionary interest, see Vol. I., sub-tit. Declarations Statutory.

Modes in which money may be raised on a reversion. (a) Money may be raised on a reversion in the following manners:—

(1) by the sale of a charge on the reversion, which in practice is only made to an Insurance Office; (2) by a mortgage of the reversion, interest until it falls in being accumulated at compound interest; and (3) by a mortgage of the reversion, interest being paid until it falls in.

In the first case, even if the reversion is contingent, no policy is required as, in calculating the amount of the charge, the Office allows for the contingency; but, in the second and third cases, if the reversion is contingent, a policy against the contingency is effected and forms part of the security.

Notice. As to notices generally, see p. 320. In all these cases notice of the charge should be given to the trustees in whom the property is vested and should be renewed on a change of trustees. Section 137 (8) of the L. P. Act, 1925, provides that new trustees shall be entitled to the custody of a notice, but does not say specifically that they shall be bound thereby. A mortgage of an interest in the proceeds of sale of land in Yorkshire is not registrable under the Yorkshire Registries Act, 1884, and a mortgagee of such an interest must protect himself by giving notice to the trustees in the usual way: *Gresham Life Assurance Society v. Crouther*, [1915] 1 Ch. 214. A

dated, &c., under the hands & seals of X. & Y., &c., the borr is entitled to one eql — pt of the ppty now subjt to the trusts of the sd settlemt [all of which is specified in the schedule hto] subjt to certain prior intts thrin during the lives & life of the sd X. & Y. & the survor of them. *Agrmt for loan*, p. 10, f. 1; for *paymt of compound intt*, p. 11, f. 7. NOW THIS DEED made in psuance of the sd agrmt & *conson & receipt clause*, p. 14, f. 1, WITNESSETH as follows :—

Wit-
nessesth.

1. *Covenant for paymt of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The borr as *benefl owner* hby assns unto the mtgee ALL that one eql — pt of the ppty now subjt to the trusts of the sd settlemt, to wch the borr is entitled as hrinbfe recited. To HOLD UNTO the mtgee subjt to the sd prior interests thrin during the lives & life of the sd X. & Y., & the survor of them & subjt also to the proviso for redmon hrinar contd, *Proviso for redmon*, p. 26, f. 2.

Assign-
ment.
Haben-
dum.

3. The borr hby covts with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Proviso that principal shl not be called in & intt, includg intt*, “orwise accruing under this secy,” *shl accumulate* “during the lives & life of the sd X. & Y. & the survor of them,” p. 37, f. 2.

(ii) *Powers for protection of equitable security*, p. 46, f. 11.

(iii) The mtgee may settle & pass or concur in settlmg & passing the accts of the trees for the time being of the sd settlemt & all accts so settled & passed shl be conclusive in favour of the mtgee & shl bind the borr.

Power
to pass
accounts
of trus-
tees.

(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11, saying, “& shl as regards payments made after the death of the sd B. on the same being made, & as regards any earlier paymts on the death of the sd B., be repaid on demand,” &c., & *addg after the words*, “*complied with*,” “but subjt to the provons of subclause (i) hrof.”

IN WITNESS, &c. (b).

[The Schedule above referred to.]

notice in lieu of distringas (under R. S. C. 46, r. 4) should be given and, if the fund is in Court, a stop order should be obtained: see *ante*, p. 46, note (d).

(b) For a form of statutory declaration by a mortgagor of a reversionary interest, see Vol. I., sub-tit. *Declarations Statutory*.

XXII.

MORTGAGE by MARRIED WOMAN for her OWN BENEFIT of her REVERSIONARY SHARE of a FUND in COURT, her title to which accrued after 1882 (c). The PRINCIPAL being made payable on the REVERSION FALLING IN or the HUSBAND'S DEATH. The HUSBAND joining to covenant for payment of PRINCIPAL and INTEREST, and a SURETY joining to covenant for payment of INTEREST.

Parties. *PARTIES*, A., *husbd*, 1; B., *wife* (hrinar called the borr), 2; C., *surety* (hrinar called the surety), 3; D., *mtgee* (hrinar called the mtgee), 4.

Recitals. *Recite*: Will of X., bequeathing a legacy of £—— in trust for K. for life, remr for children of K. who attain 21, &c., setting out the trusts in full; death of X. after 1882 & probate, Vol. I.,

Action. p. 457. AND WHAS pursuant to an order of the Chancery Division of the High Court of Justice made on the — day of — by Mr. Justice — in an action for the administron of the este of the sd X., entitled, &c. (*add reference to record*), the sd sum of £—— (less legacy duty) was invested in the pchase of £—— 2½ p.c. Consolidated Stk [or “the ppty specified in the schdle hto”] wch is standing in Court to the credit of the sd action, “the acct of,” &c. (*add reference to account*).

State of Family. AND WHAS the borr is one of the [six] chln of the sd K. & has attained the age of 21 yrs but [three] of such chln are still under that age; *agrmt for loan*, p. 10, f. 1; *that surety & A. shl join*, p. 11, f. 8; *surety independently advised*, p. 11, f. 9. NOW THIS DEED made in psuance of the sd agrmt & *conson & receipt clause*, p. 14, f. 1. WITNESSETH as follows:

Wit-
nesseth.
Mort-
gages by
married
women
of rever-
sionary
interests.

(c) In this Precedent it is assumed that the wife's title accrued after 1882, so that she can dispose of her reversionary share without the concurrence of her husband by virtue of the M. W. P. Act, 1882. The husband is, however, made to concur for the purpose of covenanting for payment. Where the wife was married and her title accrued before 1883, the old law applies. She cannot convey her reversionary interests in personalty created before 1858, but she can convey such interest under an instrument executed after 1857, not being a settlement or an agreement for a settlement on marriage. The variations where the wife's reversionary interest was created after 1857 and does not fall within the M. W. P. Act, 1882, will be that in the conveyance she will assign as beneficial ovner with the concurrence of her husband, and he will assign and confirm. Section 167 of the L. P. Act, 1925, has abolished the necessity for acknowledging the deed.

1. *Joint & several covt by A. & the mtgor for paymt of ppal & intt & intt after default*, p. 18, f. 4, & p. 17, f. 2.

2. *Covenant by surety to pay intt on default of A. & mtgor*, p. 21, f. 12.

3. The borr as benefl owner hby assns unto the mtgee ALL THAT the share or shares to wch the borr now is or may hrafter by means of the death of any one or more of the other chln of the sd K. or witth attaining a vested intt or by any other means become entitled under the sd will or orwise howsr (a) of & in the sd sum of £——2½ p.c. Consolidated Stock [or, the ppty specified in the schdle hto] or other the ppty for the time being representing the same or any pt throf, & of & in all accumulons, wch may be added thto; To HOLD UNTO the mtgee, subjt to the proviso for redmon hrinar contd; *Proviso for redmon*, p. 26, f. 2.

Assign-
ment of
share.

Haben-
dum.

4. The sd A. & the borr hby jtly & severally covt with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Provision for continuance of loan for a term certain*, p. 29, f. 2, saying, “shl not bfe the death of the sd K. or the sd A., whichever shl first happen, call in,” &c.

(iii) As betn the borr & the mtged premes on the one hand & the surety on the other hand, the borr & the mtged premes shl be primarily liable for paymt of intt on the ppal moys hby seed; & as betn the borr & the mtged premes on the one hand & the sd A. on the other hand, the borr & the mtged premes shl be primarily liable for the paymt of all moys hby seed; but these provons shl not affect, &c., *continue as at* p. 34, f. 2.

Proviso
as to pri-
mary lia-
bility.

(iv) *Surety to be liable as a ppal debtor*, “for all intt hby seed,” p. 35, f. 4.

(v) *Covenant to produce evidence of A. & K. being alive*, p. 35, f. 7, saying, “if such one of them the sd A. & K. as shl first die,” *with consequential alterations*.

(vi) *Powers for protection of equitable secy*, p. 46, f. 11.

(vii) *Power to pass accts of trees*, see *Prec. XXI.*, p. 123.

(viii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

IN WITNESS, &c. (b).

[The Schdle above referred to.]

(a) See *Re Clarke*, 36 Ch. D. 348; *Re Dallas*, [1904] 2 Ch. at p. 393.

(b) For a form of statutory declaration by a mortgagor of a reversionary interest, see Vol. I., sub-tit. *Declarations Statutory*. Notice to the Paymaster-General of a mortgage of a fund in Court is useless for the purpose of obtaining priority. Application for a stop order is the only proper safeguard.

XXIII.

MORTGAGE of a REVERSIONARY INTEREST (c) in SETTLED PERSONALTY, and a POLICY on the MORTGAGOR'S LIFE, the MORTGAGE DEBT being PAYABLE on the DEATH of the TENANT for LIFE or the MORTGAGOR. PROVISION for ACCUMULATION at COMPOUND INTEREST during life of TENANT for LIFE or MORTGAGOR, and for the POLICY being KEPT UP by the MORTGAGEE (d).

Recitals

PARTIES, as in *Prec. I.*, p. 83.

Recite marriage settlmt of the father & mother of mtgor, whereby psonalty was vested in trees upon trust for the father & mother successively for life, with remainder to the children attaining 21, &c.; the marre of the father & mother; the death of the mother; that mtgor is the only child of the marre who attained 21; the psnt state of invstmt of the trust funds; title to policy, p. 8, f. 6; agrmt for loan, p. 10, f. 1; agrmt for paymt of compound intt, p. 11, f. 7. NOW THIS DEED

As to mortgages to secure compound interest.

(c) See *ante*, p. 122, note (a). The trustees are not bound to hand over to the mortgagee more than sufficient to satisfy what is due to him: *Re Bell*, [1896] 1 Ch. 1; *Hockey v. Western*, [1898] 1 Ch. 350; cf. *Re Thomson's Mortgage Trusts*, [1920] 1 Ch. 508.

(d) As to mortgages for securing compound interest, see 2 Dav. *Pred.*, 4th ed., pt. 2, pp. 360 *et seq.*, and *ante*, p. 32, note. As to the stamp duty, see the Stamp Act, 1891, s. 88; and that moneys to be advanced for keeping up the policy are not liable to *ad valorem* duty, see *ib.* sub-s. (3). As to mortgages of policies of insurance, see *Marquis of Northampton v. Pollock*, 45 Ch. D. 190; *affd. sub nom. Salt v. Marquis of Northampton*, [1892] A. C. 1; where, however, the reasoning of the dissentients, Bowen, L.J., below, and Lord Hannen, above, deserves attentive consideration; and see the *Judicial Review*, Vol. IV., p. 25.

As to notices: distringas.

As to the invalidity of fetters on redemption, see *post*, p. 148, note.

Enquiries must be made from the trustees of the settlement, and notice must be given to them and to the insurance office. It is the duty of a trustee to give a remainderman, though only contingently entitled to a share, an authority to enable him to obtain information from the Bank of England as to charging orders, stop orders or distringas upon a fund in consols standing in the trustee's name, see *Re Tillott*, [1892] 1 Ch. 86; *Re Dartnall*, [1895] 1 Ch. 474. The doctrine of notice to trustees is discussed *post*, p. 320, note. If the trust property comprises stocks transferable at the Bank of England, or the stocks, shares, or securities of any public company, whether incorporated or not, security against malversation by the trustees, and injurious transposing of investments, may be obtained by giving notice to the bank or company, supported by affidavit, under R.S.C., 1883, Order 46; see notes thereto in the *Annual Practice*; Seton, 7th ed., 716.

made in pursuance of the sd agrmt & conson & receipt clause, p. 14, f. 1. WITNESSETH as follows :—

Wit-
nesseth.

1. *Covenant for paymt of ppal intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. *Proviso that ppal shall not be called in & intt shall accumulate*, “during the life of such one of them the borr & the sd K. as shall die first,” p. 32, f. 7, *using the words in brackets*, “or orwise accruing under this secy.”

3. The borr as **benefl owner** hby assns unto the mtgee **FIRST** All the ppty now subjt to the trusts declared by the recited settlemt or wch by means of any change of investmt or orwise may from time to time be substituted for the same resply or any pt throf. **AND SECONDLY** All that the poly of assurse in the

Assign-
ment of
settled
funds.

Assurse Socy on the life & in the name of the borr dated, &c., & nod — whby the sum of £ — is assured to be pd to the exs, ads or assns of the borr in the event of his dying during the lifetime of the sd K., *the father*, & the sum of £ — thereby assured & all moys to become payable under the sd poly & the full benefit throf. Together with all powers & remedies for recovering & obtaining paymt & transfer of the sd premes resply. To hold Unto the mtgee subjt as regards the premes first hrinbfe described & assned to the intt of the sd K. during his life thrin & subjt as regards all the sd premes to the proviso for redmon hrinar contd, *Proviso for redmon*, p. 26, f. 2.

Assign-
ment of
policy.

Haben-
dum.

4. The borr hby covts with the mtgee, **AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—**

(i) That the poly of assurse hby mtged is not void or voidable, & that he will not do or suffer anything whereby the sd poly or any new poly to be effected as hrinar mentd may become void or voidable, or the mtgee may be prevented from receiving the moys to become payable under any such poly or any pt throf, & that if the same is or shl become void or voidable he will immedly thrupon, at the request of the mtgee, do all things neey for enabling the mtgee to effect such new poly as afsd.

Covenant
that
policy
is not
void, &c.

(ii) If any such poly shl become void the mtgee may effect a new poly or polys in his name maturing on the death of the borr in the lifetime of the sd K. or on such earlier day (if any) as, *continue as at p. 37, f. 1, omitting the provisions for paymt of premiums & the power for the mortgagee to pay on mortgagor's default.*

Power to
mort-
gagee to
keep up
policy.

(iii) The mtgee may pay the annual premium or premiums & other moys (if any) necessary for keeping on foot the original

poly & for effecting or keeping on foot any new poly, & all moys, costs, charges & expenses pd or incurred by the mtgee for the pposes afsd or any of them shl be deemed to be properly pd or incurred.

Power to mort-
gagee to
surrender
or ex-
change
policy.

(ii) The mtgee may at any time or times surr any poly subjt to this secy or exchange the same for a poly maturing at the same time as the poly so exchanged, & all moys received by him on such surr shl be applied in or towards satisfson of the moys for the time being owing on this secy, & a poly taken in exchange shl be held subjt to the same equity of redmon as the poly given in exchange.

(v) *Powers for protection of equitable security*, p. 46, f. 11.

(vi) *Power to pass accts of trees*, see *Prec. XXI.*, p. 123.

Charge
of mort-
gagee's
expenses.

(vii) All costs, charges, & expenses pperly incurred hrunder by the mtgee, & all other moys pperly pd by the mtgee in respt of the sd costs, charges, expenses, or orwise, shl, togr with intt thron at the rate of £—— p.c. p.a., be charged on the mtged premes. Provd that the charge hby conferred shl be in addition & witht prejudice to any & every other remedy, lien, or secy, which the mtgee may or but for the sd charge wd have for the moys thereby seced or any pt throf.

IN WITNESS, &c. (a).

XXIV.

MORTGAGE *by* MARRIED WOMAN *for her* HUSBAND'S BENEFIT *of a* CONTINGENT REVERSIONARY INTEREST (b) *belonging to her for her* SEPARATE USE *and a* POLICY *on her life effected under the* MARRIED WOMEN'S PROPERTY ACT, 1882 (c). PROVISION *for* CONTINUANCE *of* LOAN *for a* TERM CERTAIN.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C. (hrinar called the mtgee),

Recitals. 3. *Recite will of X. bequeathing the testor's residuary real & psonal*

(a) For a form of statutory declaration by a mortgagor of a reversionary interest, see Vol. I., sub-tit. *Declarations Statutory*.

(b) See notes to *Prec. XXI.*, p. 122, and to the last two *Precedents*.

Power of
married
woman
to effect
policy.

(c) See the M. W. P. Act, 1882, s. 11, which provides that a married woman may effect a policy on her own life, or that of her husband, for her separate use. The husband is made a party to the mortgage in order to covenant for payment and for keeping up the policy, the money being advanced to him, and he is also made to confirm the assignment in order to

*este in trust for conversion & investmt of the proceeds, & declarg trusts of such proceeds, subjt to paymt of debts & legacies, for K., the testor's widow for life, with remr for such of his chln as shd survive her & attain twenty-one or marry, & the issue of such of them as should be then dead per stirpes, with the usual advancemt clause [& a declaron that all bequests to married women shd be for their separate use] ; Death of testor & probate : AND WHAS the funl & testy expses, debts & legacies of the sd testor have all been pd, & his residy real & psonal este so far as the same has been ascertained now consists of, or is represented by the ppty specified in the schdle hto & the duties due thron on his death have been pd [& the sd exs have assented (p) to the residy devise & bequest in the sd will contd] : AND WHAS the sd K. is still livg : AND WHAS there are six chln of the sd X. now livg, three of whom, includg the sd B., have attnd the age of twenty-one yrs, & the remaing three of such chln are still under that age, & one child of the sd X. has died leavg issue : AND WHAS in the circes afsd, the sd B. is entitled [for her separate use, independently of the sd A.], to one-seventh share of the trust premes constitutg or representg the residy este of the sd X., in reversion expectant on the death of the sd K., & contingently upon the sd B. outlivg the sd K., such share being susceptible of augmenton by the death of any of the other chln of the sd X. in the lifetime of the sd K. witht issue or by the death of any of such chln at any time under the age of twenty-one yrs ; *Title of B. to polyj*, p. 8, f. 6; *Agrmt for loan to A.*, p. 10, f. 1 ; NOW THIS DEED made in psuance of the sd agrmt & in conson of the sum of £—— now pd to the sd A. at the reqt of the sd B. by the mtgee, the rect &*

Adminis-
tration of
estate.

Widow
living.
Family.

Title of
wife.

imply covenants for title by him. If desired the covenants for payment, &c., may be joint and several by the husband and wife as in Precedent XXII.; see *ante*, p. 125, note. The form of the mortgage will be substantially the same, whether the wife's title to the reversion and policy arose under the old law, or she was married or her title accrued since 1882, see *ante*, p. 124, note. The variations where the husband does not concur will be obvious. A mortgage of a reversionary interest in the proceeds of sale of land in Yorkshire is not registrable under the Yorkshire Registries Act, 1884. Notice of the mortgage must therefore be given to the trustees of the settlement to secure priority: *Gresham Life Assurance Society v. Crowther*, [1915] 1 Ch. 214.

for her
separate
use.

(p) If the devise and bequest were not assented to before 1926 the property would be allowed to remain vested in the executors during the life interest.

paymt whrof in maner afsd is hby acknowledged, WITNESSETH as follows :—

1. *Covenant by A. for paymt of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

Assign-
ment of
share.

Policy.

2. The sd B., as **benefi owner** hby assns, & the sd A. as **benefi owner** hby assns & confirms unto the mtgee, ALL THAT one eq^l seventh pt or share, or other the share & intt to wch the sd B. is or will upon the death of the sd K., or orwise become entitled in the event of her survivg the sd K., of & in the ppty specified in the schdle hto, or hrafter constitutg, arisg from, or representg the residy real & psonal este of the sd X., or any pt or pts throf, & the income throf, & accumulons added thto : AND ALSO all that the poly of assurse in the — Society on the life, & in the name, of the sd B., dated, &c., & nod, &c., whby the sum of £—— is assured to be pd to the exs, ads, or assns of the sd B., in the event of her death in the lifetime of the sd K., & the sum of £—— thby assured, & all moys to become payable thrunder & the full benefit thof : TOGR WITH all powers & remedies for obtaining & compellg paymt & transfer of the sd premes resply :

Haben-
dum.

To HOLD the same UNTO the mtgee, subjt to the proviso for redmon hrinar contd ; *Proviso for redmon*, p. 26, f. 2, saying, “ If the sd A. or the sd B. or either of them,” *the reassnmt to be* “ to the sd B. [as her separate ppty & este, independently of the sd A.], or as she shl direct.”

3. The sd A. hby covts with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS (a) :

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1, saying, “ If the sd A. shl.”

(ii) *Provision for continuance of loan for a term certain*, p. 29, f. 2, saying, “ If the sd A. shl,” & adding, “ Provd always that the retainer by the mtgee of any moys reced or realised by him in respt of the sd share, poly, or premes afsd shl not be deemed to be a breach of this proven.”

(iii) The sd A. or the sd B. shl not be entitled to pay off the sd sum of £—— or any pt thof before the sd — day of —.

(iv) *Covenant by A. to keep up policy*, p. 37, f. 1, or p. 40, f. 2.

(v) *Powers for protection of equitable secy*, p. 46, f. 11, saying, “ use the names or name of the sd A. & the sd B. or either of them.”

(a) As the loan is made to the husband, the wife should not covenant for payment, &c., but only not to do anything to vitiate the policy.

(vi) *Power to sell poly by way of surr*, p. 61, f. 12.

(vii) *Power to pass accts of the trees* "of the sd will," see *Prec. XXI*, p. 123.

(viii) *Charge of mtgee's expensss with intt*, p. 74, f. 11, saying, instead of "the borr," "the sd A."

4. The sd B. hby covts with the mtgee that the sd poly is not void or voidable & that she will not do or suffer anything whby the sd poly or any new [or "substituted"] poly to be effected as afsd may become void or voidable, or the mtgee may be prevented from receiving the moys to become payable under any such poly, or any pt throf, AND that if the same is or shl become void or voidable she will immedly thrupon do all things necy for enablg the mtgee to effect such new [or "substituted"] poly as afsd.

Covenant
by wife
as to
policy.

IN WITNESS, &c. (b).

The Schdle above referred to.

XXV.

MORTGAGE to a BUILDING SOCIETY *incorporated under the BUILDING SOCIETIES ACT, 1874, with variations* (c).

PARTIES, A., a member of the — Bldg Socy, being a Society incorporated under the Bldg Societies Act, 1874,

Parties.

(b) Enquiries must be made from and notice given to the trustees of the will,* and to the insurance office: see *ante*, p. 126, note. As to the importance of stamping the assignment at once, see the Stamp Act, 1891, s. 118, and 33 Sol. J. 3.

For a form of statutory declaration by a mortgagor of a reversionary interest, see Vol. I., sub-tit. Declarations Statutory.

(c) This Precedent is adapted to a society which was originally formed under the Building Societies Act, 1874, or under the repealed Act, 6 & 7 Will. 4, c. 32, and which has obtained a Certificate of Incorporation under the Act of 1874 (see the Amendment Acts of 1875, 1877, 1884 and 1894, collectively called the Building Societies Acts). In the case of a society formed under the Act of Will. 4, and not incorporated under the Act of 1874, the mortgage must be taken in the names of the trustees. In this Precedent it is assumed that the mortgagee's powers are provided for (as usual, though it is not a plan to be recommended) by the rules, which are incorporated; otherwise, unless the whole principal money is made due on breach of covenant, in which case the statutory power arises on the breach, short express powers of insurance, sale and appointing a receiver, framed by reference to the L. P. Act powers, should be inserted, which may be taken from the next precedent of a mortgage to an Industrial and Provident Society. As to the powers of directors of a building society generally

As to
mort-
gages to
building
societies.

whose Chief Office is at — (hriinar called the borrh, which expression shl include the pson or psons for the time being constitutg the este owner in respect of the fee simple of and the respective terms subsisting in the ppties hby mtged), 1; the sd — Bldg Socy (hriinafter called the Socy, wch expression shl include their succors & assns), 2, and in conson of the sum of £ — this day advanced by the Socy to the borrh (being the amt to wch he is entitled aeedg to the rules of the Socy [and in parlar aeedg to the rules under the head —], in respt of — shares held by him in the Socy), the rect whrof is hby acknowledged, WITNESSETH as follows:—

Wit-
nessoth.

Covenant
for pay-
ment of
instal-
ments.

1. The borrh hby covts with the Socy to pay to the Socy, aeedg to the rules throf, the sum of £ — per [month] durg the period of — yrs (d), to be computed from the — day of

with regard to lending on mortgage, see *Sheffield, &c., Building Society v. Aizlewood*, 44 Ch. D. 412; *Sun Permanent Benefit Building Society v. Western Suburban, etc., Society*, [1921] 2 Ch. 438. The Building Societies Act, 1894, s. 13, prohibits societies from advancing money on second mortgage unless the first mortgage is in their favour.

Infant.

Though an infant may be a member of a building society, he cannot mortgage to the society for advances: *Nottingham, &c., P. B. B. Socy. v. Thurston*, [1903] A. C. 6.

As to mortgages to building societies by executors, see *Thorne v. Thorne*, [1893] 3 Ch. 196.

Redemp-
tion.

The provisions of s. 115 of the L. P. Act, 1925, as to which see *post*, p. 253, apply to reconveyances of mortgages to building, friendly, provident or industrial societies, and by sub-s. (9) of that section are substituted for the like powers conferred by the Acts having special reference to such societies. The receipt must be executed in the manner required by the statute relating to the society, so that where one of these societies is being dissolved or wound up a formal reconveyance should be taken as the society can then have no secretary or manager. Section 115 does not render any receipt by a society liable to any stamp duty which would not otherwise have been payable. See as to unincorporated societies, 10 Geo. 4, c. 56, s. 37, incorporated in 6 & 7 Will. 4, c. 32; and as to incorporated societies, 37 & 38 Vict. c. 42, ss. 41, 42; *Old Battersea, &c., Society v. I. R. Commrs.*, [1898] 2 Q. B. 294.

Regis-
tered
land.

As to charges on registered land to Building Societies, see the L. R. Act, 1925, s. 25 (1) (b), L. R. R. 92, 93; and as to the discharge thereof, see L. R. R. 152.

Stamps.

Mortgages to Building Societies were formerly exempt from stamp duty, but by 31 & 32 Vict. c. 124, s. 11 (re-enacted by the Stamp Act, 1891, s. 89), the exemption was repealed as to mortgages by members above £500, and as to all mortgages by non-members; and in case of societies under the Act of 1874, there is no exemption (see s. 41). The mortgage in the text appears to be chargeable with duty on the amount of the advance, under the Stamp Act, 1891, s. 87 (2).

(d) As to the right of proof in bankruptcy where the mortgage is to secure instalments of principal and interest, see *Ex p. Bath*, 27 Ch. D. 509.

—, the first of such paymts to be made on the — day of —, & the subseqt paymts to be made at regular successive intervals of [one month] durg the whole of the sd period witht deduction, but so nevertheless that, as to any day on wch any such paymt shl fall due wch shl not be a day of meetg of the Socy, the sum fallg due on that day shl be payable on the first day of meetg next ensuing, AND ALSO duly & punctually to pay as & when the same shl respbly become payable all such fines, fees, or other moys as may become payable by the borr under the — rule, or any other rule or rules of the Socy for the time being (e) in respt of the shares held by the borr as afsd (f). And fines.

(e) As to an alteration of the rules after the date of the mortgage, see *Rosenberg v. Northumberland Building Society*, 22 Q. B. D. 373; *Bradbury v. Wild*, [1893] 1 Ch. 377; *Re Quinn and National Catholic, &c., Society's Arbitration*, [1921] 2 Ch. 318.

(f) The following clause providing for the whole principal moneys becoming due in case of default should be added here if so intended :—

“Provd always that if at any time any instalmt or other moys wch shl be payable by the borr to the Socy under the covt hrinbfe contd shl be in arrear & unpaid for one calr month, or, ‘for — monthly meetgs,’ after the same shl have become due, in breach of the rules afsd or of the covt hrinbfe contd, then & in such case the whole of the future instalmts of ppal moy thrafter to become due & payable in respt of the sd advce shl immedly on the expiron of the sd period of one calr month [on the date of the last of such — meetings] become due & payable by the borr to the Socy in addon to the instalmt & moys in arrear as afsd, & shl be recoverable by the Socy with intt at the agrd rate by action agst the borr or by the exercise & enforcemt of any of their powers or remedies in that behalf.”

Provi-
sion for
whole
principal
money
becoming
due on
default.

If the mortgage (as in many of the older societies) is to secure, not (as in the text) the repayment of the sum advanced by instalments, but the payment by the advanced member of his subscriptions and other contributions to the funds of the society according to the rules, the mortgagor will covenant for payment of “all the [monthly] subscriptions wch, accdg to the rules for the time being of the Socy, shl from time to time become payable by the borr in respt of the sd — shares [calculated on the — yrs’ scale, that is to say, the sum of £— per month on the first Monday in every month for the period of — yrs from the — day of —], & all fines & other moys wch accdg to the sd rules shl become due on the sd shares,” instead

Vari-
ations
where
mortgage
is to
secure
subscrip-
tions.

Demise.
Haben-
dum.

Proviso
for re-
demp-
tion.

2. The borr as benefi owner hby demises (a), unto the Socy, ALL the ppties described in the schdle hto, *habendum*, pp. 22, 23, saying, in the case of leasehds, (p) instead of "the sd term of — yrs granted by the recited lease," "the term of — yrs granted by a lease dated, &c., & made, &c." Provd always that if the borr shl duly & punctually pay to the Socy, according to the rules throf, the monthly & other sums of moy, fines, & fees hrinar mentioned, psuant to the covt in that behalf hrinar contd, then & in such case this secy shl be vacated by a rect or reconvce psuant to the statutes in that behalf (b) & the rules for the time being of the Socy, or orwise as the borr shl direct.

3. The borr hby covts with the Socy AND IT IS HBY AGREED & DECLARED AS FOLLOWS :—

[(i) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5, unless provided for by rules.]

[(ii) *Covenant agst registron if required*, p. 45, f. 10.]

Incor-
poration
of rules.

(iii) Provd always that the rules for the time being of the Socy under the head, insert the numbers & heads of the rules applicable, or such of them as are capable of applying to this secy shl apply hto as if hrin inserted, with the neey modificons, AND ALSO that the other rules for the time being of the Socy, so far as capable of applying to this secy, & except so far as the same are hby varied or departed from or are inconsistent with any of the provons hrof, shl also (though not expressly referred to) apply to this secy (c).

of as in the text, and corresponding modifications will be made in the other clauses. As to the mode of taking the account where the loan is repayable by instalments, and an annual premium is charged against the borrower on his shares, see *Harvey v. Municipal, &c., Society*, 26 Ch. D. 273.

(a) Or, "hby charges by way of legal mtge, ALL, &c., with the paymt to the Society of the ppal moy intt & other moy hby covenanted to be pd by the borr," omitting the proviso for redemption.

(p) See ante, p. 89, note (a).

(b) See the Building Societies Act, 1874, s. 42; Fisher, 6th ed., 750.

Provision
as to
transfer.

(c) For the usual form of a transfer of a mortgage of this nature, see post, p. 245. It will be observed that a transfer cannot be made in that form without the concurrence of the person entitled to the equity of redemption, and it is by no means clear that a transfer made without his concurrence is valid, *Re Rumney & Smith*, [1897] 2 Ch. 351. It has been held in *Sun Permanent Benefit Building Society v. Western Suburban, &c., Society*, [1920] 2 Ch. 144, that where a mortgage deed declares that the expression "the Society" shall include the successors and assigns of the society as in the text the mortgage is transferable without the concurrence

(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11, saying,
 "All costs, charges, & expenses pperly incurred hrunder by the
 Socy (including all costs, charges & expenses incurred by the
 Socy in or about the exercise or execution of the powers of sale
 or any of the powers or trusts wch may be vested in the Socy
 by virtue of the rules for the time being of the Socy applicable
 hto as afsd) and," &c.

Charge
of mort-
gagee's
expenses.

[(v) *Clause preserving right of consolidon*, p. 74, f. 13.]

[4. *Attornment clause*, p. 75.]

IN WITNESS, &c.

The Schdle above referred to.

of the mortgagor. But the point was left open whether without such a declaration the mortgage would be so transferable. To obviate this difficulty it has been suggested that the following clause should be added :—
 "Prov'd always that at any time after any instalmt or other
 moys, *continue as in note (f)*, p. 133, down to "in breach of the
 rules afsd or of the covt hrinbfe contd" [or "after the power
 of sale applicable hto shl have become exercisable"] the Socy
 may on paymt to them of the sum then required to redeem the
 mtged premes, transfer the moys hby seed & all intt thence-
 forth to become due for the same & the benefit of all sees for
 the same to the pson or psons makg such paymt (hrinar
 called the transferees, wch expression shl include his or their exs,
 ads & assns) & that after such transfer, the rules of the Socy
 shl cease to apply to this transon, & the mtged premes shl be
 redeemable only on paymt to the transferees at the expiron of
 six calr months from the date of the transfer of the sum so pd,
 with intt thron from that date in the meantime at the rate
 of £4 p.c. p.a., & further that the mtged premes shl be charged
 with paymt to the transferees of intt at the rate afsd on the
 ppal moys for the time being due on this secy by equal half-
 yrly paymts in every yr, the first of such paymts to be made at
 the expiron of six calr months from the date of the transfer, &
 that a recital in any such transfer as to the amt reqd to
 redeem the mtged premes shl as betn the borr & the trans-
 ferees & all psons claiming under them respy be conclusive."

XXVI.

MORTGAGE to an INDUSTRIAL and PROVIDENT SOCIETY (a)
by a MEMBER to secure PAYMENT by INSTALMENTS
according to the RULES. EXPRESS POWER to REPAIR
and INSURE, and EXPRESS POWERS of SALE and
APPOINTING a RECEIVER, with restrictions. VARIA-
TIONS for FURTHER ADVANCES.

Parties.

PARTIES, A., *mtgor*, a member of the — Socy, Ltd. (hrinar called the borr, wch expression shl include the pson or psons for the time being constituting the estate owner in respt of the fee simple of the ppty hby mtged and any pson substituted for the borr psuant to para — of Special Rule — of the Rules of the Socy), 1; the sd — Socy, Ltd., being a Socy registered under the Industrial & Provident Societies Act, 1893 (hrinar called the Socy, wch expression shl include their succors & assns), 2, and in conson of the sum of £—— now pd to the borr by the Socy out of the funds of the Socy (the rect whrof is hby acknowledged) [& of the covt by the Socy hrinar contd for the loan to the borr of the further sum of £—— by the instalmts & on the condons hrinar mentd], WITNESSETH as follows :

Wit-

nessesth.

Covenant
to pay
by instal-
ments.

1. The borr hby covts with the Socy to pay to the Socy the sd sum of £—— with intt thron at the rate of £—— p.c. p.a. from the date of this deed [& every further sum wch may be advanced by the Socy psuant to the covt in that behalf hrinar contd, with intt at the rate afsd from the date of the advance] within a term of — yrs & — weeks [months] to be computed from the — day of — by the instalmts, at the times, & in mner following, that is to say :—The sd sum of £—— with intt as afsd by equal weekly [monthly or

(a) See the Industrial and Provident Societies Acts, 1893 and 1895, and the Amendment Act of 1913. As to previously existing societies see s. 3 of the Act of 1893. By s. 21 of that Act the effect of registration is to render the society a body corporate, and to vest in the society all property for the time being vested in any person or persons in trust for the society. As to advancing money to members on the security of real or personal property, see s. 40; and as to the discharge of mortgages on redemption see s. 43, and the third Schedule. Some of the clauses in the last Precedent and in the notes thereto might be adapted to this Precedent. An industrial and provident society includes a public utility society for the purposes of s. 4 of the Housing, Town Planning, &c., Act, 1909, and of s. 40 of the H. T. P., &c., Act, 1919.

quarterly] instalmts of ppal & intt in the proportions required by the rules of the Socy of £—— each, the first of such instalmts to be pd on the —— day of —— next, & the last throf on the —— day of —— [and each such further advce with intt as afsd by equal weekly [monthly or quarterly] instalmts of ppal & intt in the proportions afsd, the first of such instalmts to be pd at the expiron of one week [month or three months] from the date of the advance being made, & the last thof on the —— day of ——]. And durg the continue of this seey to observe & pform all the rules of the Socy & punctually to pay all fines, dues, & moys becoming due or payable from or by the borr to the Socy. And further that in case the power of sale conferred by this deed shl at any time hrafter become exercisable, then & in such case the whole of the ppal moys then remaining unpaid in respt of the sd sum of £—— [& of any such further advance as afsd] shl forthwith become due & payable from or by the borr to the Socy, & togr with any instalmts & moys then in arrear shl be recoverable by the Socy with intt at the rate afsd by action agst the borr or by exercise & enforcemt of any of the powers or remedies of the Socy in that behalf. Provd always that the borr shl be at liberty to prepay any instalmt & the provon in that behalf contd in paragraph —— of Special Rule —— of the rules of the Socy shl apply accordingly.

To pay
fines, &c.
Provision
for whole
principal
money
becoming
due.

[2. The Socy shl from time to time unless & until the power of sale conferred by this deed shl have become exercisable advance to the borr such further sum or sums as he or they may require not exceeding in the whole with the sd sum of £—— now advanced, the sum of £——, by the instalmts, at the times, & in mnner provided by Special Rule —— of the Rules of the Socy. Provd always that this seey shl extend to all sums wch may be advanced by the Socy to or on account of the borr although the obligon to make or continue the sd advances shl have ceased or never existed.]

Covenant
to make
further
advances.

3. The borr as **benefl owner** hby demises (b) unto the Socy ALL the ppty described in the schdle hto : *habendum* to "the Socy,"

Demise.
Haben-
dum.

b) Or, "hby charges by way of legal mtge, ALL, &c., with the paymt to the Society of the ppal moy intt & other moy hby covtd to be pd by the borr," omitting the proviso for redemption.

Proviso
for
redemp-
tion.

p. 22, f. 1 ; Provd always that if the borrr shl pay to the Socy the sd sum of £—— [and every other sum wch may be advanced psuant to the covt by the Socy hrinar contd] with intt thron [resply] by the instalmts, at the times, at the rate, & in mner hrinar mentd, & shl duly & punctually pay all fines, dues, & moys & observe & pform all the rules of the Socy to be pd, observed, & pformed by the borrr psuant to the covt in that behalf hrinbfe contd, then & in such case this secy shl be vacated by a receipt or reconvee psuant to the statutes in that behalf & the rules for the time being of the Socy or orwise as the borrr shl direct.

4. AND IT IS HBY AGREED & DECLARED AS FOLLOWS :—

Incorpo-
ration of
Rules of
Society.

(i) The provons contd in paragraphs — & — of Special Rule — of the Rules of the Socy in reference resply to repairs & insurance & other matters shl apply to this secy as if hrin inserted with the necy modifcons. And the provons of the remaining paragraphs of the sd Special Rule & all other Rules for the time being of the Socy so far as capable of applying to this secy, & except so far as the same are hby varied or departed from or are inconsistent with any of the provons hrof shl also, though not expressly referred to, apply to this secy.

Power to
repair
and
insure.

(ii) The Socy shl be at liberty to insure the mtged premes to the full value throf & to keep the same in good & substantial repair & all moys costs charges & expenses pd or incurred by them for such pposes shl be deemed to be pperly pd or incurred.

Power of
sale and
appoint-
ment of
receiver.

(iii) The Socy may at any time or times after the exon of this deed sell (a) (but subjt as hrinar mentd) the mtged premes or any pt throf or appt a recer of the income of the same premes or any pt throf in like mner as if the statutory power of sale or apptmt of a recer had resply arisen. And the provons of the L. P. Act, 1925, relatg to the exercise of the sd statutory powers resply (except the provons restrictg the exercise throf resply contd in sections 103 & 109 (1) of the sd Act) & all the provons of the sd Act with reference to sales effected & recers appted thrunder shl apply

(a) The rules of an Industrial and Provident Society usually provide that the statutory power of sale shall be exercisable in certain events ; but also require the covenant for payment to be, as in this Precedent, for payment of principal and interest by equal instalments over a given period, in which case the statutory power of sale will never arise, and consequently the provisions in the rules as to the events in which it shall be exercisable are ineffectual. An express power of sale is therefore inserted.

resply to the powers of sale & apptmt of a recev hby conferred & to any sale effected or recev apptd thrunder as if such powers were the statutory powers.

(iv) The Socy shl not exercise the power of sale or apptmt of a recev hrinbfe contd unless & until (a) *default in paymt of instalmt*, p. 59, f. 7 (v); or (b) there has been a breach of some provon contd in this deed or in the Rules of the Socy & on the pt of the borr to be observed or pformed other than & besides the covt for paymt of ppal & intt hrin contd; or (c) *Bkcy, &c.*, of *mtgor*, p. 59, f. 7 (i); or (d) *Distress*, p. 59, f. 7 (iii).

Restrictions on power of sale and appointment of receiver.

(v) The borr shl not exercise the powers of leasg or agreeing to lease vested in him by virtue of this deed or any statute in that behalf wtht the consent in writg of the Socy given under the hand of the secretary for the time being of the Socy.

Restriction on mortgagor's power of leasing.

(vi) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

IN WITNESS, &c.

The Schedule above referred to.

XXVII.

MORTGAGE of FREEHOLDS to TRUSTEES to secure PRESENT LOAN and FUTURE ADVANCES (a), under a POWER in a SETTLEMENT authorising the TENANT for LIFE (b) to CHARGE a LIMITED SUM for his own benefit.

PARTIES, A., tenant for life and este owner (hrinar called the borr, defined as in *Prec. XI.*, p. 99), 1; B. & C. *tees*, 2; D.

Recitals.

(a) If the mortgagees are not trustees a covenant to make the further advances as set out on p. 33, f. 8, should be added after the covenant for payment so as to obtain the benefit of priority for the further advances: see L. P. Act, 1925, s. 94 (1) (c), and *ante*, p. 3.

(b) Under s. 16 of the S. L. Act, 1925, the estate owner of the settled land who in the case in the text will be the tenant for life himself, holds the fee simple upon such trusts as may be requisite for giving effect to the equitable interests and powers affecting it. The tenant for life as such has no legal estate in the settled land and cannot create a legal term by virtue of his life tenancy only, but the Act constitutes him the estate owner in which capacity he both has the legal estate in fee and can create legal terms and, further, is bound by sub-ss. (i) and (iii) of the above section to create such estates as may be required for raising the money. A mortgage expressed to be made by an estate owner pursuant to this section takes effect in favour of a mortgagee in priority to all trusts equitable interests and powers subsisting or to arise under the settlement except those to which it is expressly made subject, whether or not the mortgagee has notice of such equities.

Settle-
ment.

mtgee (hinar called the *mtgee*), 3; WHAS by a principal vesting deed dated, &c., and made pursuant to section 37 of the S. L. Act, 1925, between, &c., certain ppty situate at — (including the ppty hereby *mtged*) was vested in the *borr* in fee simple upon the trusts therein declared by reference to a previously subsisting settlement of the same ppty dated, &c., and made, &c. And by the same deed the trees were stated to be the trees of the settlement for the purposes of the Settled Land Act, 1925.

AND WHAS a principal sum of £—— is requested to be raised upon security of the ppty comprised in the sd vesting deed *Agrmt to secure psnt & future advces* (a), p. 11, f. 5. NOW THIS DEED made in psuance of the sd *agrmt & conson & receipt* (b) clause, p. 14, f. 1, with variation in note (b). WITNESSETH as follows :—

Wit-
nessesth.

1. *Covenant for paymt of present & future advances*, p. 18, f. 6, with first variation in note (c) & intt after default, p. 17, f. 2.

Demise.

2. The *borr* as *tree* in exercise of the power for this ppose vested in him by s. 16 of the S. L. Act, 1925, & of every or any other power in this behalf him enablg hby demises (c) to the *mtgees* ALL the ppty mentioned in the schdle hereto : *habendum* p. 22, f. 1. *Proviso for redmon*, p. 24, f. 1.

3. The *borr* hby covts with the *mtgee*, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) As betn the *mtged* premes on the one hand & the *borr*

Regis-
tered
land.
Stamp.

The registered proprietor is bound, if required by the mortgagee, to charge the land with the money raised : L. R. Act, 1925, s. 90.

(a) The limit of amount of principal is mentioned as the power in the settlement requires it, otherwise it would not have been necessary, the security being good for any amount which the stamp is sufficient to cover : see Stamp Act, 1891, s. 88 and see *Lord Suffield v. I. R. Commrs.*, [1908] 1 K. B. 865 ; and as to equitable mortgages, see the schedule, MORTGAGE, (3) As to the stamp on mortgages for further advances, see *ante*, p. 90, note.

(b) The loan should be stated to be made to the borrower at the request of the trustees.

(c) Or, "hby charges by way of legal *mtge*, ALL, &c., with the paymt to the *mtgees* of the ppal moy intt & other moy hby covtd to be pd by the *borr*," omitting the proviso for redemption.

on the other hand, the mtged premes shl be primarily liable, continue as in f. 35 on p. 3.

(iii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

(iv) *Charge of mtgees' expenses with intt*, p. 74, f. 11.

[4. *Acknowledgment & undertakg as to munimts (d)*, as in clause 5 of Prec. XV., p. 110.]

IN WITNESS, &c.

Schedule.

XXVIII.

CREATION of a MORTGAGE TERM to secure PORTIONS and the COSTS of raising them (a).

PARTIES, A., tenant for life so as to include, &c. as in Prec. XI., Parties.
p. 99, 1; B. & C., portions trustees (hrinar called the trees), 2;

(d) See *ante*, p. 110, note (e).

(a) Portions terms limited under settlements executed, or under wills of persons dying, before the 1st January, 1926, have been converted by para. 1 (6) of the Second Schedule of the S. L. Act, 1925 into mere equities having no existence as legal terms. After the 31st December, 1925, a strict settlement of land can only be created in accordance with the provisions of ss. 4 and 6 of the S. L. Act, 1925, dealing respectively with settlements *inter vivos* and by will, *i.e.* by vesting deed and trust instrument. The trusts declared by the latter in favour of the portionists will create in the trustees a right to call upon the tenant for life or statutory owner in his capacity as estate owner of the settled land to create the legal term necessary to secure the portions. It would appear that under s. 16 (1) of the Act the tenant for life or statutory owner will demise the term or charge the land direct to the mortgagee at the request of the trustees, and the former will hold the security subject to those equities to which the mortgage is expressly made subject but free from all others whether he has notice of them or not. The same subsection relieves the mortgagee from seeing that a case has arisen to authorise the mortgage and that no more money is being raised than is wanted.

Acknowledgment.
Mortgages for portions.

The loan will be paid to the trustees. The tenant for life will covenant to pay the interest during his life, but even in the absence of such a covenant he would still be obliged as between himself and the trustees for the portionists to keep down the interest: *Elph. Intro.* 7th ed. 196. Where the portionists concur they will be parties of the second part, the recital will state that the trustees have with their concurrence agreed to borrow the money, and in the operative part the mortgage money will be stated to be paid with their consent to the trustees. It must be ascertained that the necessary vesting deeds have been executed.

C., *mtgee* (hinar called the *mtgee*), 3. *Recite vesting deed and contents as in last Prec.* : AND WHAS the costs incurred by the trees in & about the negotion of & the preparon & exon of this deed amt to £—— (b), makg with the sd sum of £—— the sum of £——; *Agrmt for loan to “the trees,”* p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt & *conson & receipt clause*, saying “at the request of the sd A.” p. 15, f. 2, WITNESSETH as follows :—

Wit-
nessesth.

1. *Covenant for paymt of intt by A. during his life*, p. 18, f. 5.

2. The sd A. at the request of the trees and in exercise of the power on this behalf vested in him by s. 16 of the S. L. Act, 1925, & of every other power him enabling & as tree hby demises (c), unto the *mtgee*, *Parcels*, Vol. I., pp. 480 *et seq.*; *habendum*, p. 22, f. 1, *Proviso for redmon*, p. 24, f. 1.

3. AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

Costs of
register-
ing notice
of term.

The costs incurred by the *mtgee*, after any pson or psons shl have been regrd as proptor or proptors of the reversion expectant on the sd term, of registering notice of such term psuant to the L. R. Act, 1925, togr with intt thron at the rate afsd, shl be charged on the mtged ppty.

IN WITNESS, &c.

XXIX.

MORTGAGE of FREEHOLDS to secure the RE-TRANSFER of STOCK (a) and for PAYMENT in the meantime of SUMS equal to the DIVIDENDS. VARIATIONS where INTEREST on the SUM which would be produced by SALE of the STOCK is payable till RE-TRANSFER.

Recitals.
Agree-
ment.

PARTIES, as in *Prec. I.*, p. 83; *Recite title of borr*, p. 7, f. 1 : AND WHAS it has been agrd that the *mtgee* shl sell the sum of

(b) The trustees can, without special authority, include their costs in the amount raised : *Armstrong v. Armstrong*, L. R. 18 Eq. 541.

(c) Or, “hby charges by way of legal mtge, ALL, &c., with the paymt to the *mtgee* of the ppal moy intt & other moy hby covtd to be pd by the sd A.” omitting the proviso for redemption.

Stock
mort-
gages.

(a) Although stock mortgages are at the present day very much less frequently met with in practice than was formerly the case, it has been thought advisable to retain the above precedent in view of the practice being to some

£—— 2½ p.c. Consold Stk to wch he is entitled (b), & pay the proceeds throf to the borr upon havg the re-pehase in his name of the sd sum of £—— stk, togr with the paymt in the meantime of sums of moy eql to the dividends thron (c) [of intt in the meantime on such proceeds at the rate hrinar mentd] seed in mner hrinar appearg; NOW THIS DEED made in psuance of the sd agrmt & in conson of the mtgee havg sold the sd sum of £—— stk, & havg this day pd the sum of £—— sterling, the net sum produced by such sale, unto the borr, receipt, WITNESSETH as follows:—

Wit-
nesseth.

1. *Covenant to retransfer stock, & to pay sums equal to the dividends* [or, *intt on the sum of £——*] & sums equal to the dividends [or, *intt*] after default, p. 19, f. 8.

2. The borr as **benefl owner** hby demises (e) unto the mtgee ALL THAT *Parcels*, Vol. I., pp. 480 *et seq.*; *habendum*, p. 22, f. 1; *Proviso for redmon*, p. 24, f. 1.

3. The borr hby covts with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

(i) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[*(ii) Covenant agst registron if required*, p. 45, f. 10.]

(iii) The powers of sale & appointing a recer conferred by statute on mtgees, & the provons subsidiary or incidental to such respective powers, shl apply to this secy with the modi-

Power of
sale, &c.

extent revived during times of depression in the stock markets. Trustees cannot invest on a stock mortgage under the ordinary powers of varying securities: *Whitney v. Smith*, L. R. 4 Ch. 513. As to the stamp, see Stamp Act, 1891, ss. 6, 87 (1).

By the Fin. Act, 1911, s. 17, Government stock can, if registered under that section, be transferred by deed; and no stamp duty is payable in respect of such deed of transfer. See the Regulations, [1912] W. N., pt. 2, p. 115, and form of transfer, *ib.*, p. 117.

(b) Where the mortgage is to trustees, say, “to wch they are entitled on a joint acct.” The other variations will be as in Prec. I.

(c) As regards stock mortgages prior to the National Debt (Conversion) Act, 1888, an agreement to pay half-yearly sums equal to the dividends on the old 3 per cent. Annuities, is satisfied by the payment of quarterly sums equal to the dividends on the same amount of new stock created by that Act (s. 21); see also *ante*, p. 27, note (a).

(e) Or, “hby charges by way of legal mtge, ALL, &c., with paymt to the mtgee of the ppal sum required to repurchase the sd sum of £—— Consold Stk intt & other moy hby covtd to be re-transferred & pd by the borr,” omitting the proviso for redemption.

ficons rendered necy by reason of this deed being a secy for the transfer of stk in lieu of the paymt of money.

(iv) *Charge of mtgee's expenses with intt*, p. 174, f. 11.

IN WITNESS, &c.

XXX.

MORTGAGE of a BUILDING LEASE to a MARRIED WOMAN, the MORTGAGE MONEY being her SEPARATE PROPERTY (a). PROVISIONS for ADVANCES by INSTALLMENTS as wanted, and for CONTINUANCE of LOAN for a TERM CERTAIN. POWER to MORTGAGEE to complete BUILDINGS on MORTGAGOR'S DEFAULT, &c.

Recitals. *PARTIES*, A., *mtgor* (hrinar called the borr, which expression shl include the este owner for the time being of the term created by the lease hrinar recited), 1; B., the wife of C., of, &c. (hrinar called the *mtgee*), 2: *Recite lease to mtgor settg out the covt to build*: AND WHAS in psuance of the sd covt, the borr has commenced the erection of bldgs on the piece of land demised by the sd lease: AND WHAS the borr has reqtd the *mtgee* to lend him the sum of £—— for the ppose of enablg him to complete the sd bldgs, wch the *mtgee* has agrd to do out of moys belongg to her as her separate ppty, upon havg the repaymt throf with intt seed in mner hrinar appearg: AND WHAS upon the treaty for the sd loan, it was agrd that the sum of £—— pt of the sd sum of £——, shd be advanced to the borr by the *mtgee* on the execution of this deed, & that the residue of the sd sum of £—— shd be advanced to the borr by the *mtgee* by the instalmts, in mner & on the condons hrinar mentd. NOW THIS DEED made in psuance of the sd agrmt &, *conson & receipt clause*, p. 14, f. 1, WITNESSETH as follows:—

Com-
mence-
ment of
buildings.
Agree-
ment for
loan.

Loan to
be by
instal-
ments.

Wit-
nesseth.

1. *Covenant to pay present & future advances & intt after default*, p. 18, f. 6, & p. 17, f. 2.

Demiso.

2. The borr as **benefl owner** hby demises (b) unto the *mtgee*

M. W. P.
Act, 1882.

(a) The mortgage-money being the wife's separate estate, the mortgage may be made to her as a *feme sole*, whether she was married before or since the M. W. P. Act, 1882, came into operation, under sections 2 or 5 of that Act, and she may sue on the covenants (s. 1 (2)), and convey the estate and exercise the powers as a *feme sole*.

(b) *Or*, "hby charges by way of legal *mtge*, ALL, &c., as in text,

ALL & singular the premes comprised in or demised by the recited lease Togr with all bldgs & erections wch now are or wch shl at any time durg the term hby granted be erected & standg on the sd piece of land & premes ; *habendum*, p. 23, f. 2 ; *Proviso for redmon*, p. 24, f. 1.

3. The mtgee hby covts with the borr that the mtgee or her assns will from time to time (subjt as hrinar mentd) advance to the borr such further sum or sums as he may require, not exceedg, with the sd sum of £—— now advanced, the sum of £——, by monthly instalmts of £—— each, such instalmts to be payable on the —— day of each calr month & the first instalmt to be pd on the —— day of —— next. **PROVD ALWAYS** that no instalmt shl exceed four-fifths of the prime cost of the works executed by the borr durg the then precedg calr month, acedg to the value of the same as computed by a surveyor to be approved by the mtgee or her assns : **PROVD ALSO** that the reasble charges of such surveyor shl be borne by the borr & may be deducted from any instalmt. **PROVD ALSO** that if (c) the borr shl become bkpt, or have a receiv- ing order made against him, or enter into any arrangemt or composon for the benefit of his creditors, or a recer shl be apptd of the mtged premes, or if the mtged premes or any pt throf or any chattels thron belongg to the borr shl be taken in execution, or if any chattels on the mtged premes shl be taken under a distress for the rent reserved by the sd lease, or if the borr shl not, in the judgmt of the mtgee or her assns, make such progress with the sd bldgs & works as is hrinar provd, or shl assn or part with the benefit of this psnt covt, or if any covt hrin expressed or implied & on the pt of the borr to be observed & pformed (other than the covt for paymt of the ppal moys advanced with intt thron) shl not have been observed & pformed, or if the

Covenant
to make
further
advances.

with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borr," omitting the proviso for redemption.

(c) In this Precedent s. 103 of the L. P. Act, 1925, is excluded, so as to make the power of sale exercisable as soon as it arises. An alternative plan is to omit this provision and adopt form 7 on p. 58, making the statutory power exercisable upon the happening of various events. In this case the events in which the obligation to make further advances and to allow the loan to continue will cease, and the power to enter and complete the works will arise, will be expressed to be when "the power of sale applicable hto shl have become exercisable."

right to redeem the security hby created shl be in any wise incumbered or settled, then & in any such case the obligon of the mtgee to make or continue such advances shl cease. **PROVD ALWAYS** that this secy shl extend to all sums which may be advanced by the mtgee or her assns to or on account of the borrr, although the obligon to make or continue the sd advances shl have ceased or never existed.

4. The borrr hby covts with the mtgee **AND IT IS HBY AGREED & DECLARED AS FOLLOWS :—**

(i) *Provision for reductn of intt on punctual paymt*, p. 29, f. **1.**

(ii) *Provision for continuance of loan for a term certain (a)*, p. 29, f. **2**, saying, instead of “if the power of sale applicable hto shl not have become exercisable,” “if none of the events shl have happened in wch the obligon of the mtgee to make or continue the sd advances is to cease as hrinbfe mentd.”

Covenant
by mort-
gagor to
execute
works.

(iii) That the borrr will proceed with & continue the erection of the sd bldgs & the execution of the sd works in a pper mner & with due diligence, in order that the same may be completed in accordance with & within the time provd by the covt contd in the sd lease : **AND THAT (b)** upon the happening of any of the events in which the obligon of the mtgee to make or continue the sd advances is to cease as hrinbfe mentd, the mtgee may enter upon the mtged premes (c), & continue & complete the sd erections, bldgs, & works, either by contract or by engaging workmen, & providing materials & plant, & generally in such mner as she may think pper, and all moys expended by the mtgee under this provon shl be deemed to be pperly pd or incurred by her.

(iv) *Covenant to repair & insure*, p. 40, f. **4**, or p. 43, f. **5.**

(v) *Express power of sale by reference to Statute but excluding s. 103 of L. P. Act, 1925 (d)*, p. 57, f. **2.**

[(vi) Power to sell leasehds in lots by way of underlease, p. 61, f. 11.]

(vii) *Charge of mtgee's expenses with intt*, p. 74, f. **1.**

IN WITNESS, &c. (e).

(a) See note (c) on last page.

(b) See note (c) on last page.

(c) See *post*, p. 159, note (a).

(d) See note (c) on last page.

(e) If only part of the premises demised by the lease are mortgaged, recite assignment of part and add clause 5 (vii) of Prec. IV., p. 89.

XXXI.

MORTGAGE of a LEASEHOLD PUBLIC HOUSE to a FIRM
of BREWERS (a).

PARTIES, A., *mtgor* (hrinar called the *borr*, *defined as in last Parties. Precedent*), 1; B., C. & D., *mtgees*, trading as co-ptners under the firm name of B. & Co. (hrinar called the *mtgees*), 2.

Recite lease, p. 7, f. 3; [*Devolution of title to mtgor*, p. 8, f. 4]. *Agrmt to secure present & future advances*, p. 11, f. 4, saying, "the sum of £—— out of their ptnership assets" with *second variation in note (b)*, on p. 11, includg "successors in business." NOW THIS DEED made in psuance of the sd agrmt & *conson & receipt clause*, p. 14, f. 1, WITNESSETH as follows:—

Wit-
nesseth.

1. *Covenant for paymt of ppal & intt on demand*, p. 20, f. 10, with *variation in note (e)* includg "successors in business."

2. *Covenant by mtgees to make further advances to the borr* includg "successors in business."

3. The *borr as benefl owner* hby demises () unto the *mtgees* ALL & singr the —— premes comprised in or demised by the recited lease; *habendum*, p. 23, f. 2.

Demise.

4. The *borr as benefl owner* hby assns unto the *mtgees*— FIRST, all the goodwill (c) of the trade of a licensed victualler and beer dealer carried on upon the premes hribfe demised & the benefit of all licences held in connection therewith. AND SECONDLY, all moy to wch the *borr* may become entitled under the Licensing (Consolidation) Act, 1910, or any Act amending or re-enacting the same as *compenson (d)* for the non-renewal of

Assign-
ment.

(a) As to contracts by a firm, see Vol. I., p. 15. It generally happens that on the mortgagor's death the trade is continued by some member of his family. Hence it is desirable to make the mortgagor's covenants extend to his successors in business.

In order to avoid clogging the equity of redemption (see note on next page) many of the mortgagor's covenants should be restricted to "the continuance of this security."

Before making an advance the mortgagees should inspect the register of licences directed to be kept under the Licensing C. Act, 1910, s. 50.

(b) Or, "hby charges by way of legal mtge, ALL, &c., with the paymt to the *mtgees* of the ppal moy intt & other moy hby covtd to be pd by the *borr*," omitting the proviso for redemption.

(c) See *Re Bennett*, [1899] 1 Ch. 316.

(d) See the Licensing C. Act, 1910, s. 20, and the cases collected, Vol. I., sub-tit Leases (Houses).

Benefit of
"tying"
covenant.

Haben-
dum.

the sd licences as afsd. To HOLD UNTO the mtgees subj't to the proviso for redmon hrinar contd.

5. *Proviso for redmon*, p. 26, f. 3, with second variation in note (a), includg "successors in business," & saying "& reassign the premes hrinbfe assigned."

6. The borr hby covts with the mtgees & with each of them, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

To insure.

(i) The borr or his successors in business will keep all messes, bldgs, tenant's fixtures, trade fittings, stock in trade, plate glass windows, mirrors & ppty now or for the time being subj't to this secy in such a state of repair & insce as is required by the covts of the sd lease [& will keep all plate glass windows & mirrors now or for the time being subj't to this secy insured agst injury whether accidental or orwise.]

Not to
remove
fixtures.

(ii) The borr or his successors in business will not remove the sd tenant's fixtures or trade fittings wtht the consent in writing of the mtgees.

To reside.

(iii) The borr or his successors in business will reside in the house hby mtged & psonally carry on the trade of a licensed victualler & beer dealer thron.

To deal
only with
the mort-
gagees.

(iv) The borr or his successors in business will pchase from the mtgees (a) & from no other pson or psons all malt liquors consumed or sold in or upon or sent out from the mtged premes, provd that the mtgees shl be willing to sell the same to the borr

Fettering
equity of
redem-
ption.

(a) The benefit of this covenant will pass to the successors in business of the mortgagee without mention of "successors & assigns": *John Brothers, &c., Co. v. Holmes*, [1900] 1 Ch. 188; *Manchester Brewery Co. v. Coombs* [1901] 2 Ch. 608; see *Tolhurst v. Associated, &c., Ltd.*, [1903] A. C. 414; and cf. *Kemp v. Baerselman*, [1906] 2 K. B. 604. The covenant is valid unless it prevents the mortgage from being paid off for an unreasonable time and so fetters the right of redemption: *Biggs v. Hoddinott*, [1898] 2 Ch. 307; *Morgan v. Jeffreys*, [1910] 1 Ch. 620.

On the general doctrine against a mortgagee stipulating for a collateral benefit and so fettering the right to redemption, see *James v. Kerr*, 40 Ch. D. 449; *Mainland v. Upjohn*, 41 Ch. D. 126; *Salt v. Marquis of Northampton*, [1892] A. C. 1; *Santley v. Wilde*, [1899] 2 Ch. 474; *Noakes & Co., Ltd. v. Rice*, [1902] A. C. 24; *Bradley v. Carritt*, [1903] A. C. 253; *Samuel v. Jarrah, &c., Corpn.*, [1904] A. C. 323; 2 *White & T., L. C.*, notes to *Howard v. Harris*; *De Beers, &c., Ltd. v. British, &c., Co.*, [1912] A. C. 52; *Fairclough v. Swan Brewery Co., Ltd.*, [1912] A. C. 565; *Kreglinger v. New, &c., Co., Ltd.*, [1914] A. C. 25; *Re Cuban Land Co.*, [1921] 2 Ch. 147. The mortgagor and mortgagee may by an independent transaction subsequent to the mortgage make an agreement which will deprive the mortgagor of his right to redeem: *Reeve v. Lisle*, [1902] A. C. 461.

at the current market prices (*b*), and the fact of any barrel other than such as are supplied by the mtgees being upon the mtged premes (whether empty or not) shl be conclusive evidence of a breach of this covt.

(v) The borr will not assn or demise & neither he nor his successors in business will part with the posson of the sd house witht the consent in writing of the mtgees. Not to assign.

(vi) The borr or his successors in business will take out annually (or oftener if necessary) pper licences for carrying on the sd trade & neither he nor they will do or suffer any act, matter or thing, whereby the existing licences or any licences for the time being in force may be forfeited or the renewal throf refused [or by reason whereof an entry of a conviction of the pson for the time being holding such licences for an offence as such licensed pson (unless the same shl be reversed or annulled on appeal) or an entry in respt of the mtged premes wch may prejudicially affect the existence or renewal of such licences may be made on the register of licences kept by the clerk of the Licensing Justices (*c*)]. To take out licences, &c.

(vii) The borr or his successors in business will insure & keep insured against loss or forfeiture (*d*) the existing & all other licences for the time being in force in the sum of £ — [in the full value throf] in the name of the mtgees in an office to be approved of by them, & will on demand produce to the mtgees the policies for the insces effected psuant to the covts hrinbfe contd & the receipts for the premiums or other moys payable for that ppose, & in case of the borr or his successors in business making default in that behalf the mtgees may, &c., continue f. 3, p. 40. To insure licences.

(viii) The borr or his successors in business will at the request of the mtgees deliver posson of the mtged premes to such pson or psons as may be appointed by the mtgees & will endorse & transfer the sd licences to such pson or psons & sign & give all To give possession.

(*b*) Where the tenant of a tied house agrees not to sell malt liquors other than those purchased from the landlord, a covenant is implied that the liquors supplied will be of good quality, and at fair and reasonable prices: *Courage & Co., Ltd. v. Carpenter*, [1910] 1 Ch. 262. If the mortgagees are the lessors, and the lease contains a "tying" covenant, it should be omitted in the mortgage. As to "Market price," see *Charrington & Co., Ltd. v. Wooller*, [1914] A. C. 71.

(*c*) See the Licensing C. Act, 1910, s. 50; 47 Sol. J., 201.

(*d*) Insurance against loss or forfeiture does not cover loss of licence owing to redundancy: *Wooton v. Lichfield Brewery*, [1916] 1 Ch. 44.

notices required to effect the legal transfer of such licences or for obtaining new licences to or for such person or persons as the case may require, & will at the like request withdraw from the books of the excise the name of the borrower as carrying on trade on the mortgaged premises.

Power to
pay out-
goings,
&c.

(ix) The mortgagees may during the continuance of this security pay on behalf of the borrower or his successors in business all moneys which shall be payable by the lessee under the covenants contained in the recited lease & all rates, taxes, duties, outgoings, or assessments imposed on the mortgaged premises or on the owner or occupier in respect thereof & all moneys which may be payable for the insurances & licences hereinbefore covenanted to be obtained & all moneys paid by the mortgagees under this provision shall be deemed to be properly paid by him or them.

(x) *Events in which power of sale shall be exercisable*, p. 58, f. 7, including sub-clauses (i), (iii) & (vi), saying, in the case of bankruptcy, "the borrower or his successors in business."

(xi) Any sale of the mortgaged premises under the power of sale applicable hereto may be made either by assignment or by under lease & either subject to or free from any incumbrance not binding the mortgagees.

Power to
manage,
&c.

(xii) The mortgagees may at any time hereafter enter upon the mortgaged premises (a) & manage the business of a licensed victualler carried on thereon either personally or by a sub-manager to be appointed by them & may demise the mortgaged premises with or without the benefit of the said licences for any term not exceeding the residue for the time being unexpired of the term granted by the recited lease & may accept surrenders, *continue* p. 66, f. 4.

(xiii) *Clause extending statutory power of lease of mortgagor & mortgagee*, p. 66, f. 3, with variation in note (h) on p. 66.

(xiv) *Clause restricting mortgagor's power of lease*, p. 65, f. 2.

Trusts of
compensation
and
policy
moneys.

(xv) All moneys received during the continuance of this security by the mortgagees as compensation awarded in respect of the refusal of the licensing authority to renew the said licences or any of them, or in respect of any policy hereby covenanted to be effected, shall be applied first in payment of the costs incurred by the mortgagees under this deed, secondly in or towards satisfaction of the moneys

(a) Apparently a mortgagee will not render himself liable in damages for forcible entry, although such entry is an indictable offence: see *Hemmings v. Stoke Poges Golf Club*, [1920] 1 K. B. 720, overruling *Edwick v. Hawkes*, 18 Ch. D. 199.

for the time being owing on this secy, & subjt thereto shl be held in trust for the borr or his successors in business.

(xvi) *Charge of mtgee's expenses with intt*, p. 74, f. 11, saying instead of "the borr," "the borr or his successors in business."

(xvii) *Provision as to changes in firm*, p. 73, f. 9.

7. The borr hby irrevocably appoints K., L. & M. all of the — Brewery, coopers to the mtgees, & each & every of them or his or their substitute (b) or substitutes to be the attys & atty of the borr in his name & on his behalf to give & sign all notices & do & execute all acts instrumts & things necy or pper for obtaining or transferring the sd licences in mnner afsd & for withdrawing from the books of the excise & from the register of licences the name of the borr as carrying on trade on the demised premes. Power of attorney.

8. *Interpretation of "successors in business" of the mtgor*, p. 75, f. 14.

IN WITNESS, &c. (c).

XXXII.

MORTGAGE of FREEHOLDS by EXECUTORS (a).

PARTIES, A., B., & C., *exors* (hrinar called the borrs, *defined as* *Parties.*
in Prec. I., p. 83), 1; D., *mtgee* (hrinar called the mtgee), 2.

(b) See L. P. Act, 1925, s. 128.

(c) If only part of the premises demised by the lease are mortgaged recite assignment of part and add clause 5 (vii) of *Prec. IV.*, p. 89.

(a) By s. 39 (1) of the Administration of Estates Act, 1925, a personal representative has the same power to raise money out of the real and personal estate of a testator or intestate for the purposes of administration or during a minority of a beneficiary or the subsistence of a life interest or until distribution by mortgage or charge, whether or not by deposit of documents, as he had before the 1st January, 1926, with respect to personal estate vested in him, and such power may in the case of land be exercised by way of legal mortgage. By s. 2 (2) of the same Act a conveyance (which includes a mortgage: s. 55 (1) (iii)) may be made by the proving executors only whether or not power is reserved to the other or others to prove. Execu-
tors'
power to
mort-
gage.

An executor may sell or mortgage the surface apart from the minerals: *Re Chaplin's Contract*, [1922] 2 Ch. 824 not following *Re Wickstead's Trusts*, [1921] 2 Ch. 184: and see Vol. I., p. 351.

An executor may give a charge over registered land though he is not himself registered: L. R. Act, 1925, s. 37 (1).

Personal representatives have power to mortgage leaseholds for the

Recitals. *Recite death and apptmt of exors, and probate of will of testor*, Vol. I., p. 458, f. 6; *Agrmt for loan of* "the sum of £—, which is required by the borrs as such exors as afsd for the pposes of admon," or *as the case may be*, p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt &, *conson & receipt, clause*, p. 14, f. 1, WITNESSETH as follows:—

Wit-
nessest. 1. *Charge of intt after default*, p. 28, f. 1, saying, "The borrs as psonal repves hby charge," &c.

purpose of paying their testator's debts: *Re Morgan*, 18 Ch. D. at p. 98; and see cases collected, Robbins & Maw, 4th ed., 172; and defraying the costs: *Re Whistler*, 35 Ch. D. at p. 566; *Re Verrell*, [1903] 1 Ch. at p. 69; and probably for the general purposes of administration: *Re O'Donnell*, [1905] 1 Ir. R. 406.

Payment
of estate
duty by
executors.

A rateable part of estate duty is a first charge on property which does not pass to the executor as such, *Fin. Act*, 1894, s. 9 (1); *O'Grady v. Wilmot*, [1916] 2 A. C. 231. The charge is capable of registration as a land charge under the *L. C. Act*, 1925, s. 10 (1), Class D. (i). Executors or administrators may nevertheless pay the estate duty on any property passing on the death of the deceased which is not under their control if the persons accountable for the duty request them to make such payment, *Fin. Act*, 1894, s. 6 (2). Any person authorised or required to pay the duty has power to raise the amount, with interest and expenses, by sale or mortgage or terminable charge on the property or any part thereof, s. 9 (5). Duty paid by an executor or administrator in respect of property not under his control is to be repaid to him by the trustees or owners of the property, but if it is in respect of real property it may, unless otherwise agreed upon, be repaid by instalments, s. 9 (4), as provided in s. 6 (8); see *Re Gray*, [1896] 1 Ch. 620.

Effect of
L. P. Act,
192.

By subsection (1) of s. 16 of the *L. P. Act*, 1925, a personal representative is accountable for all death duties (which by s. 205 (1) (iv) include all duties leviable or payable on a death), leviable or payable in respect of land (including settled land) which devolves upon him by any statute or otherwise. Subsection (2) of the same section imposes the liability to account in every other case on the estate owner, other than a purchaser for value free from a charge which has attached for such duties, in respect of land or any interest therein capable of being overreached by a conveyance to a purchaser under the *S. L. Act*, 1925, or pursuant to a trust for sale. The person accountable may by sub-s. (3) raise the duties and costs by exercising any of the powers which any statute confers for this purpose. The power to mortgage for this purpose is conferred by the *Finance Act*, 1894, s. 9 (5) above-mentioned. The Commissioners of Inland Revenue are empowered by sub-s. (7) to give a certificate discharging the land from the claim for duty on being satisfied that the person accountable either has or will pay or commute all duties for which he is accountable. The duties remain a first charge on the property in respect of which they are payable until the property is effectually discharged therefrom, *Fin. Act*, 1894, s. 11.

A tenant for life mortgaging for estate duty cannot raise interest, as it is his duty to keep it down: *Re Earl Howe's S. E.*, [1903] 2 Ch. 69; *Re Earl of Egmont's S. E.*, [1912] 1 Ch. 251.

2. *Mortgagors not to be personally liable*, p. 28, f. 3.

3. The borrs as psonal repves of the sd X. deced hby demise (b) Demise. unto the mtgee, *Parcels*, Vol. I., pp. 480 *et seq.*; *habendum*, p. 22, f. 1; *Proviso for redmon*, p. 24, f. 1 (c).

4. AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

[5. *Covenant against registron by borrs for themselves only*, p. 45, f. 10, with direction that the costs incurred by the mtgee “shl togr with intt thron at the rate afsd, be charged on the mtged premes if required.”]

IN WITNESS, &c.

XXXIII.

MORTGAGE of the land of a LUNATIC under the LUNACY ACT, 1890, s. 117 (a).

PARTIES, A., *lunatic*, a pson of unsound mind acting by B. of, &c., the duly appted committee of his este [in the case of a *lunatic not so found by inquisition*, say “a pson of unsound mind not so found by inquisition, acting by B. of, &c., the pson appted to exercise the powers of a committee of his este”], 1; C., *mtgee* (hrinar called the mtgee), 2. Parties.

Recite title of A., p. 7, f. 1; AND WHAS the mtgee has agrd with the sd A., acting by the sd B. as afsd, to lend him, upon Recitals.

(b) *Or*, “hby charge by way of legal mtge, ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby charged on the mtged premes by the borrs,” omitting the proviso for redemption, but adding if desired the words in inverted commas in the next note.

(c) If the mortgage is likely to be redeemed by the executors themselves, and it is desired that the security should be kept alive, add “but the receipt of the exs for the time being of the sd X. for the ppal moy & intt hby secured shl operate as a transfer to such exs of the secy hby created”: see L. P. Act, 1925, s. 115 (2) (b).

(a) The power exercisable by the committee of a lunatic so found by inquisition can be exercised by a person appointed by the Judge in Lunacy or by the Master (see Lunacy Act, 1908, s. 1) on behalf of any person mentioned in the Lunacy Act, 1890, s. 116 (1), not being a lunatic so found. The mortgage is properly made in the name and on behalf of the lunatic: L. P. Act, 1925, s. 22 (1). The lunatic will be authorised to covenant for title: *Re Ray*, [1896] 1 Ch. 468; but will not as a rule be authorised to covenant for payment: *Re Fox*, 33 Ch. D. 37, though the Court has jurisdiction to authorise such a covenant: see *Re Ray*, *sup.*

the pper consent in that behalf being obtained, the sum of, &c.; *continue agrmt for loan*, p. 10, f. 1; AND WHAS by an Order in Lunacy dated, &c., & made in the matter of the lunacy of the sd A., it was ordered that the sd B., as [the pson appted to exercise the powers of] such committee as afsd, shd be at liberty, in the name & on behalf of the sd A., to execute a mtge of the ppty hby mtged, on paymt into Court by the mtgee of the sum of £—; AND WHAS —, the Master in Lunacy, has settled & approved of this deed as a pper mtge psuant to the last mentd order, in testimony whrof the seal of the sd Master has been affixed in the margin hrof; AND WHAS the mtgee on the — day of — pd into Court the sd sum of £— to the credit of, “A., a pson of unsound mind,” &c., *add reference to account*. NOW THIS DEED made in psuance of the sd agrmt & order, & for the conson afsd, WITNESSETH as follows:—

Wit-
nesseth.

1. *Charge of intt after default by* “the sd A. actg by the sd B. as afsd as **benefl owner**,” p. 28, f. 1.

2. PROVD ALWAYS that so long as the intt payable in respt of the ppal moys hby secd shl be pd on the days hrinbfe appted for the paymt throf or within — days thrafter, & the sd A. shl be living, the mtgee shl have no right or power to sell or foreclose the mtged ppty or orwise to realise this secy or require or enforce paymt of the ppal moys hby secd, or any pt throf.

Demise.

3. The sd A. acting by the sd B. as afsd as **benefl owner** hby demises (b) unto the mtgee, *Parcels*, Vol. I., pp. 480 *et seq.*; *habendum*, p. 22, f. 1; *Proviso for redmon*, p. 24, f. 1.

IN WITNESS, &c.

(b) Or, “hby charges by way of legal mtge, ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby charged on the mtged premes,” omitting the proviso for redemption.

XXXIV.

MORTGAGE of FREEHOLDS or LEASEHOLDS including PARTNERSHIP PROPERTY by TRUSTEES, where the LEGAL ESTATE is vested in them upon TRUST for SALE under the TRANSITIONAL PROVISIONS of the L. P. ACT, 1925 (a).

PARTIES, A. & B., trustees for sale, or The — Bank, Ltd., trust corporation (hinar called the borrs, defined as in *Prec. I.*, p. 83, or *Prec. IV.*, p. 87), 1; C., D., & E., beneficiaries, 2; M., mtgee (hinar called the mtgee), 3.

Recite lease: WHAS by the effect of the transitional provons of the L. P. Act, 1925, the entirety of the ppty hby mtged has become vested in the borrs in fee simple or for the residue of the term created by the sd lease upon the statutory trusts for sale & orwise in the sd Act mentd or referred to free from incumbs. AND WHAS the sum of £—— is required to be raised for the ppses of the trusts now affecting the proceeds of sale of the sd ppty

(a) This precedent is intended for use in cases where land was before 1926 held in undivided shares in common either as partnership property or not. As to the changes created by the L. P. Act, 1925, in such cases, see Vol. I., p. 436, and *post*, p. 156. Where the entirety became vested in the Public Trustee under the provisions of Part IV. of the First Schedule of the Act, and new trustees have been appointed the first recital in the text should be altered to make this apparent: see Vol. I. sub-tit. Conveyances on Sale. S. 3 (1) (b) (ii), enables any person of full age entitled to require any principal sum to be raised, to request the trustees in writing to raise the sum, and the trustees are then bound to do so by creating a mortgage taking effect in priority to the trust for sale. The request to the trustees is merely for their protection, and need not be noticed in the mortgage. So long as the money is paid to two or more trustees or to a trust corporation a purchaser (including a mortgagee: s. 205 (1) (xxi)) is not concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale. The beneficiaries are joined in the form in the text to covenant for the service of the loan and preservation of the security, but, if the mortgagee will allow it, they may be omitted, and the debt and interest charged on the land as in *Prec. XXII.*, p. 152.

Conveyances executed after 1925 on trust for sale, where the beneficiaries are entitled to the proceeds of sale in undivided shares or otherwise, should contain an express power to the trustees to mortgage: see Vol. I., sub-tit. Conveyances on Sale. In this case the recital in the text should contain “with pwr, etc.” and the mortgage should be expressed to be made in exercise of the express power.

The mortgagee is protected by s. 17 of the T. Act, 1925, from seeing that the money is wanted or that no more is raised than is wanted or to the application of it.

agmt for loan, p. 10, f. 1. AND WHAS the sd C., D., & E. have agreed to join in this deed in mnr hrinar appearing.

NOW THIS DEED made in psuance of the sd agrmt & in conson of the sum of £—— now pd by the mtgee to the borrs (the rect whrof the borrs do hby acknowe) WITNESSETH as follows :—

1. *Covenant for paymt by C., D., & E., of ppal & intt & intt after default*, p. 18, f. 5, & p. 17, f. 2.

2. The borrs as **trees** in exercise of the pwr in this behalf vested in them by the L. P. Act, 1925, & of every other pwr in this behalf enabling them hby demise (b) unto the mtgee, *Parcels*, Vol. I., pp. 480 *et seq.*, *habendum*, p. 22, f. 1, or p. 23, f. 2 : *Proviso for redmon*, p. 24, f. 1.

3. The sd C., D., & E. hby jtly & severally covt with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reductn of intt on punctual paymt*, p. 29, f. 1.

(ii) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5, saying, “cause to be kept.”

(iii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

IN WITNESS, &c. (p).

XXXV.

MORTGAGE by TENANTS in COMMON of UNDIVIDED SHARES OF PROCEEDS OF SALE (a) of FREEHOLDS, subject to an ANNUITY PAYABLE OUT OF INCOME.

PARTIES, A. & B. (hrinar called the borrs, 1 ; C. (hrinar called the mtgee), 2 : WHAS by the effect of the transitional

(b) Or “hby charge by way of legal mtge, ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the sd C., D., & E.,” omitting the proviso for redemption.

(p) See *ante*, p. 89, note (a).

(a) Legal estates in land held in undivided shares now no longer exist : L. P. Act, 1925, s. 1 (6) ; S. L. Act, 1925, s. 36. Undivided shares, in land which were created before the 1st January, 1926, are converted into interests in the proceeds of sale thereof by Part IV. of the First Schedule of the L. P. Act, 1925. If the undivided shares were in possession at that date, para. 1 of Part IV. of the First Schedule provides as follows : (a) If the entirety were vested in trustees or personal representatives whether subject or not to incumbrances affecting the entirety or an undivided share the entirety

provons of the L. P. Act, 1925, the entirety of the freehold ppty described in the Schedule hereto has become vested in X. & Y. upon the statutory trusts in the sd Act mentd or referred to & under the sd trusts an anny of £—— p.a. is payable out of the rents and profits of the sd ppty to M. during his life and subjt thereto the borrs are together entitled to —— equal —— pts of & in the sd rents & profits & the proceeds of sale of the sd ppty; *Agrmt for loan*, p. 10, f. 1: NOW THIS DEED made in psuance of the sd agrmt & in conson of the sum of £—— now pd by the mtgee to the borrs (the rect whrof the borrs hby resply acknowe), WITNESSETH AS FOLLOWS:—

Recitals.
Title
subject to
annuity.

Wit-
nesseth.

1. *Joint & several covenant for paymt of ppal & intt & intt after default*, p. 18, f. 4, & p. 17, f. 2.

vests in the trustees or personal representatives free from incumbrances provided such incumbrances are not secured under the Act or otherwise by legal terms of years absolute, and is held by them on the statutory trusts and in any other case the land is held by them upon the statutory trusts subject to the rights and duties of administration on a death; if the entirety of the land (not being settled land) were vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting the undivided shares, but subject or not to incumbrances affecting the entirety, the entirety vests in them as joint tenants upon the statutory trusts; (c) if the entirety were settled land, whether or not subject to incumbrances affecting the entirety or an undivided share, held under one and the same settlement, the entirety vests free from all incumbrances not protected by legal terms of years absolute in the trustees of the settlement as joint tenants upon the statutory trusts; and (d) in any case to which the foregoing provisions do not apply the entirety vests in the Public Trustee free from incumbrances upon the statutory trusts. If the undivided shares fall into possession after the 31st December, 1925, and the land is not settled land, the personal representatives or other estate owner must give effect to the foregoing provisions as if the share had fallen into possession immediately before the 1st January, 1926, and in the meantime the land will be held upon the statutory trusts: para. 2 of Part IV. of the First Schedule. The statutory trusts are set out in s. 35 of the Act, and are shortly a trust for sale and a trust of the proceeds of sale, and rents and profits until sale after payment of the usual management charges for the persons beneficially entitled including incumbrances of former undivided shares or whose incumbrance is not secured by a legal mortgage. See, further, Vol. I., p. 436.

After the 31st December, 1925, an undivided share in land can only be created behind a trust for sale or under a settlement where the legal estate in the entirety is vested in trustees under s. 36 of the S. L. Act, 1925: s. 34 of L. P. Act, 1925. In either case the interest of an incumbrancer is protected by the statutory trusts.

Assign-
ment.
Haben-
dum.

2. The borrs, as **benefl owners**, hby assign & each of them, as **benefl owner** of an undivided *moiety* of the ppty hby mtged, hby assns unto the mtgee, All those the shares & interests of the borrs in the ppty mentd in the schdle herto to wch they are resply entitled as hrinbfe recited: To **HOLD** the same UNTO the mtgee, subjt to the proviso for redmon hrinar contd: *Proviso for redmon*, p. 26, f. **2**, the reconvce to be "to the borrs, in *eql* shares as tenants in common subjt as hrinbfe mentd."

3. The borrs jtly & severally covt with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

- (i) *Provision for reduction of intt on punctual paymt*, p. 29, f. **1**.
 - (ii) *Covenant to repair & insure*, p. 40, f. **4**, to the end of the covt to produce receipts, saying "will cause to be kept."
 - (iii) *Events in wch power of sale shl be exercisable*, p. 58, f. **7**, including sub-clause (i).
 - (iv) *Powers for protection of equitable securities*, p. 46, f. **11**.
 - (v) *Charge of mtgee's expenses with intt*, p. 74, f. **11**.
- IN WITNESS, &c. (b).

The Schedule.

NOTE ON BILLS OF SALE.

Defini-
tion of
bill of
sale.

A bill of sale is a document under which the holder has power to take possession of personal chattels, but not a document declaring the rights of a person to whom the chattels have been delivered: *North Central Wagon Co. v. Manchester, &c., Rly. Cos.*, 35 Ch. D. 191. A parol contract is not a bill of sale, but if the terms of that contract are reduced into writing, that writing becomes the only evidence admissible to prove the contract, and may be a bill of sale: *Ex p. Parsons*, 16 Q. B. D. 532, and see *Dublin City Distillery v. Doherty*, [1914] A. C. 823: *Re David Allester, Ltd.*, [1922] 2 Ch. 211. The statutory provisions regulating bills of sale are contained in the Bills of Sale Acts, 1878, 1882, 1890, and 1891. They are fully discussed in Reed on Bills of Sale.

Law as to
bills of
sale.
13 Eliz.
c. 5.

The following points require to be attended to in connection with bills of sale by way of mortgage:—

1. A bill of sale of chattels which remain in the possession of the assignor is void against creditors as being fraudulent within the meaning of 13 Eliz. c. 5, s. 2, unless such possession is consistent with the tenor and object of the deed; this, however, will usually be the case if the assignment is by way of mortgage only: *Martindale v. Booth*, 3 B. & Ad. 498; *Alton v. Harrison*, L. R. 4 Ch. 622; *Steward v. Lombe*, 1 Brod. & Bing. 506; *Ex p. Games*, 12 Ch. D. 314; and there seems little if any risk of a mortgage bill of sale which is otherwise unimpeachable, being invalidated under that statute.

(b) Notice of this mortgage must be given to the trustees: see s. 137 of the L. P. Act, 1925, and *ante*, p. 116.

2. A mortgage bill of sale is liable to be defeated (*Ex p. Izard*, 23 Ch. D. 409; *Swift v. Pannell*, 24 Ch. D. 210) in the event of the bankruptcy of the mortgagor by the reputed ownership clause in the Bankruptcy Act, 1914, s. 38 (c), as to any chattels comprised in it being at the commencement of the bankruptcy (which, by s. 37, relates back to the act of bankruptcy on which the receiving-order is made, subject to the provisions of s. 45, protecting certain dealings in good faith and without notice during the interval) in the possession, order or disposition of the bankrupt in his trade or business, with the consent and permission of the true owner (*i.e.*, of the mortgagee), under such circumstances that he is the reputed owner thereof: *Re Ginger*, [1897] 2 Q. B. 461; *Hollinshead v. Egan*, [1913] A. C. 564. The exclusion of this section in the case of hotels where a notorious trade custom exists to the effect that goods on a man's premises are not necessarily his own does not extend to other businesses: *Re Tabor*, [1920] 1 K. B. 808. *Re Kaufman Segal and Domb*, [1923] 2 Ch. 89. The section will be excluded if the mortgagee obtains, or does his best to obtain possession of the chattels before the commencement of the bankruptcy, or between the act of bankruptcy (provided he has no notice of it) and the receiving order: *Krehl v. Great Central, &c., Co.*, L. R. 5 Ex. 289; *Re Wright*, 3 Ch. D. 70; *Spackman v. Miller*, 12 C. B. (N. S.) 659; *Ex p. Harding*, L. R. 15 Eq. 223. The section as to reputed ownership does not apply to fixtures, even though in the nature of trade fixtures, or otherwise removable as between lessor and lessee: *Ex p. Barclay*, 5 De G. M. & G. 403; *Mather v. Fraser*, 2 K. & J. 536; *Whitmore v. Empson*, 23 Beav. 313. The registration of a bill of sale under the Bills of Sale Act, 1878, s. 20, excluded the operation of the reputed ownership clause of the Bankruptcy Act, 1849; but that section has been repealed by the Bills of Sale Act, 1882, s. 15, so that as regards bills of sale by way of security for money not registered before the 1st day of November, 1882, registration is now of no avail for this purpose: *Ex p. Izard*, 23 Ch. D. 409; *Swift v. Pannell*, 24 Ch. D. 210.

3. The mere existence of an antecedent debt is not valuable consideration for a security given by the debtor: *Wigan v. English, &c., Association*, [1909] 1 Ch. 291; and see *Glegg v. Bromley*, [1912] 3 K. B. at p. 479; *Hambleton v. Brown*, [1917] 2 K. B. 93.

4. A mortgage of all, or substantially all, a man's property, whether he be in trade or not, is an act of bankruptcy and void, as being fraudulent within the Bankruptcy Act, 1914, s. 1, (1) (b), if made to secure a past debt: *Re Wood*, L. R. 7 Ch. 302; *Re Sinclair*, 26 Ch. D. 319; *Re Jukes*, [1902] 2 K. B. 58; unless the mortgage is made in pursuance of a *bonâ fide* agreement made at the time of the advance: *Ex p. Izard*, L. R. 9 Ch. 271; *Ex p. Kilner*, 13 Ch. D. 245; *Ex p. Hauxwell*, 23 Ch. D. 626, not contemplating the postponement of the mortgage until the eve of insolvency: *Ex p. Fisher*, L. R. 7 Ch. 636; *Ex p. Burton*, 13 Ch. D. 102; *Re Jackson & Bassford, Ltd.*, [1906] 2 Ch. 467 even though the actual mortgage is not executed until shortly before the date of the bankruptcy: *Re Davies*, [1921] 3 K. B. 628. But an assignment by way of mortgage of all a man's property for a substantial present advance: *Pennell v. Reynolds*, 11 C. B. (N. S.) 709; or for a past debt and a substantial present advance: *Mercer v. Peterson*, L. R. 3 Ex. 104; *Ex p. Reed*, L. R. 14 Eq. 586; *Ex p. Ellis*, 2 Ch. D. 797; provided the advance be *bonâ fide* for his benefit: *Ex p. Johnson*, 26 Ch. D. 338; *Administrator-General, &c. v. Lascelles, &c., & Co.*, [1894] A. C. 135; or for a past debt and future advances agreed to be made, and afterwards in fact made, provided there is a *bonâ fide* promise to make them, though

Reputed ownership in bankruptcy.

Mortgage for antecedent debt.

Mortgage of all the debtor's property.

not legally binding: *Re p. Wilkinson*, 22 Ch. D. 788; is not invalidated by the Bankruptcy Act, 1914.

A mortgage on all the existing property of the mortgagor is not void for uncertainty if that property can be ascertained at the time of assignment: *Re K. J. & Co.* [1890] 2 Ch. 530. The question whether a mortgage of the whole of the debtor's present and future property, even for a present advance, would be enforceable as a whole by the Court, must be considered an open one, see *Re Clarke*, 30 Ch. D. 348; *Tailby v. Official Receiver*, 13 App. Cas. 523; *Re Turcan*, 40 Ch. D. 5. The test appears to be whether the assignment creates an immediate equitable charge upon the property assigned or whether all that is created is a contractual right in the assignee to enforce the assignment specifically: *Re Lind*, [1915] 2 Ch. 345; cf. *Hamwood v. Millar's Timber, &c., Co.*, [1917] 1 K. B. 305 at p. 314.

Fraudulent preference.

5. A voluntary conveyance made in favour of a creditor, with the object of giving him a preference over the other creditors, by a person who is adjudged bankrupt within three months afterwards, is void against the trustee in bankruptcy or liquidation, as being a fraudulent preference within the Bankruptcy Act, 1914, s. 44; and by s. 1 (1) (c), any fraudulent preference is an act of bankruptcy: *Re Wrenn*, [1915] 1 K. B. 80; *Re B. & S.*, [1920] 2 K. B. 426. If, however, the security is given under pressure, or in pursuance of an antecedent agreement: *Re p. Tempest*, 11 K. B. 70; *Smith v. Palmer*, 1 Ch. D. 107; *Re p. Holman*, 1 K. B. 746; or is made for the protection of the debtor, it will not be within that enactment: *Sharp v. Jackson*, [1890] A. C. 410. As to who is a creditor within the meaning of the section, see *Re Blackpool, &c., Co., Ltd.*, [1901] 1 Ch. 77.

Bills of Sale Acts.

But the most important matters to notice are the requirements of the Bills of Sale Acts, 1875 and 1882. Those Acts (which by s. 3 of the Act of 1882 are to be read together as one Act) apply to all bills of sale of "personal chattels" given as security for the payment of money, with the exception, so far at least as the Act of 1882 is concerned, of debentures of companies, see s. 17, and *infra*, including (Bills of Sale Act, 1875, s. 4, and Bills of Sale Act, 1882, s. 3) assignments, transfers, declarations of trust without transfer, inventories of goods with receipts thereto attached, or receipts for the purchase money of goods and other assurances of personal chattels, powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and agreements, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon is conferred: *Re p. Parsons*, 16 Q. B. D. 531; *Re p. Hubbard*, 17 Q. B. D. 600; *Holton v. Fowler*, 30 Ch. D. 809; *Yule v. Shrewsbury*, 41 Q. B. D. 41; *Charleworth v. Mills*, [1892] A. C. 231; *Shoars v. Jones* [1922] 2 Ch. 502; but not including assignments for the benefit of the creditors of the person making or giving the same: *Hadley v. Broune*, [1895] 1 Q. B. 140; marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or selling, which was held in *Stanton v. Thompson*, [1912] 1 K. B. 120, to include an agreement for the sale of growing crops, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods: *Re Hamilton, Young & Co.*, [1905] 1 K. B. 771; or authorising or purporting to authorise, either by indorsement or delivery, the possessor of such document to transfer or receive goods thereby

Meaning of "bill of sale."

Instruments excluded from the operation of bill of sale.

represented. A post-nuptial settlement executed in pursuance of an ante-nuptial deed and a transfer of chattels executed in pursuance of a covenant in an ante-nuptial deed fall within the term "marriage settlement," and do not require registration as bills of sale, *Re Reis*, [1904] 2 K. B. 769. *Bond fide* leases with powers of distress are not generally, though under certain circumstances they may be, bills of sale, *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373; cf. *Venner's Electrical, &c. Appliances v. Thorpe*, [1915] 2 Ch. 404. An instrument charging, &c., imported goods, executed prior to their deposit in a warehouse, &c., or to their being reshipped for export, or delivered to a purchaser, not being the person giving such instrument, is not a bill of sale; see Bills of Sale Act, 1891, and *Dublin City Distillery v. Doherty*, [1914] A. C. 823; *Re David Allester, Ltd.*, [1922] 2 Ch. 211.

Imported goods.

Where chattels are settled as heirlooms on A for life with remainder to B—either by a direct gift or by a gift to trustees—the interest of the remainderman is a "chase in action" within the meaning of the exception in s. 4 of the Act of 1878; a mortgage by the remainderman does not therefore require registration: *Re Thynne*, [1911] 1 Ch. 282.

Reversionary interest in heirlooms.

The Bills of Sale Act, 1878, only applies where the chattels remain in the "possession or apparent possession" of the grantor (s. 8), and neither Act applies to a security accompanied by delivery, or where the goods are already in the creditor's possession: *Charlesworth v. Mills*, [1892] A. C. 231; or to goods sold by a husband to his wife remaining in the house where the husband and wife live: *Ramsay v. Margrett*, [1894] 2 Q. B. 18; *Re Satterthwaite*, [1895] 2 Manson, 52; *French v. Gething*, [1922] 1 K. B. 236. It has been held that the Acts do not include a delivery order as to furniture warehoused in the borrower's name: *Grigg v. National, &c., Co.*, [1891] 3 Ch. 206; or an agreement between a principal and his agent making goods in the agent's hands security for his advances to his principal: *Morris v. Delobel-Flipo*, [1892] 2 Ch. 352; and that for the purpose of meeting the Acts, parties may agree that certain physical powers of detention or circumscription shall be sufficient to protect a carrier's lien: see per Phillimore, J., in *Lord v. G. E. Rly. Co.*, [1908] 1 K. B. 195; [1909] A. C. 109. As to the difference between "apparent possession" under the Bills of Sale Acts, and "reputed ownership" under the Bankruptcy Act, see 2 Dav. Prec., 3rd ed., 155.

"Apparent possession."

The expression "personal chattels" (Bills of Sale Act, 1878, s. 4) means goods, furniture, and other articles capable of complete transfer by delivery, and also (when separately assigned or charged), fixtures and growing crops, and (whether separately assigned or charged, or not) "trade machinery," as defined by the Act of 1878, s. 5, i.e., machinery used in any factory or workshop, other than fixed motive power, fixed power machinery, and the pipes for steam, gas, and water: *Ex p. Moore*, 14 Ch. D. 379; *Topham v. Greenside, &c., Co.*, 37 Ch. D. 281; but fixtures (other than "trade machinery" as so defined), or growing crops when respectively assigned or charged with the land or buildings, by the same instrument, are not to be deemed to be separately assigned or charged, and therefore to come within the Acts, by reason only that they are assigned by separate words, or that power is given to sever them from the land or building, without otherwise taking possession of or dealing with such land or building: Bills of Sale Act, 1878, s. 7.

Meaning of "personal chattels." As to fixtures, growing crops, and trade machinery.

It has been held that, notwithstanding the Act, a valid security may be given upon "trade machinery" affixed to the land by an ordinary mortgage of the land, without any express assignment or mention of such fixed trade machinery, or of fixtures generally (which of course, by the general

law, and *à fortiori*, under the L. P. Act, 1925, s. 62 (1), pass by a conveyance of the land), *Re Yates*, 38 Ch. D. 112; *Johns v. Ware*, [1899] 1 Ch. 359; and this is so even if there is an express assignment of fixtures (including fixed trade machinery) with the land, *Re Brooke*, [1894] 2 Ch. 600; but not in the case of trade machinery if power is given to deal with it apart from the land: *Climpson v. Coles*, 23 Q. B. D. 465; *Re Yates, sup.*; nor if expressly assigned with and therefore dealt with *quâ* personal chattels: *Small v. National Provincial Bank of England*, [1894] 1 Ch. 686. As to what amount of fixing to the soil renders a chattel a fixture, see *Reynolds v. Ashby*, [1904] A. C. 466; *Lyon v. London, &c., Bank*, [1903] 2 K. B. 135; *Crossley Bros., Ltd. v. Lee*, [1908] 1 K. B. 86; *Northern, &c. Co. v. Shepherd*, 52 Sol. J. 715; *Pole-Carew v. Western Counties, &c., Co.*, [1920] 2 Ch. 97; *Vaudeville Electric Cinema, Ltd. v. Muriset*, [1923] 2 Ch. 74. As to the effect of including title deeds in a schedule, see *Swanley Coal Co. v. Denton*, [1906] 2 K. B. 873; see also 50 Sol. J. 706.

Removal
of trade
fixtures.

In the absence of special agreement a mortgagor cannot as between himself and his mortgagee remove fixtures put up by himself even if they are trade fixtures: *Hobson v. Gorringe*, [1897] 1 Ch. 182. A tenant of a mortgagor in possession may remove trade fixtures put up by himself after the mortgage: *Sanders v. Davis*, 15 Q. B. D. 218; but where trade machinery is supplied to the mortgagor by a stranger, and affixed to the land after the mortgage on an agreement that until payment they are not to become his property, and that in default of payment at the proper time the person supplying them may enter and remove them, that person cannot remove them as against the mortgagee: *Hobson v. Gorringe, sup.*; *Reynolds v. Ashby*, [1904] A. C. 466; unless the circumstances are sufficient to give rise to an implied authority from the mortgagee to the mortgagor to remove fixtures in the ordinary course of the latter's business: *Gough v. Wood*, [1894] 1 Q. B. 713. A covenant in the mortgage deed not to remove trade fixtures is inconsistent with any such implied authority: *Ellis v. Glover*, [1908] 1 K. B. 388. See further 15 L. Q. R. 165; and as to the rights of equitable mortgagees, see *Re Morrison, &c., Ltd.*, [1914] 1 Ch. 50.

As to the
chattels
to be
assigned.

6. A bill of sale given as security for payment of money is void (except as against the grantor) in respect of any chattels not specifically described in a schedule: Bills of Sale Act, 1882, s. 4. As to what is a specific description, see *Carpenter v. Deen*, 23 Q. B. D. 566; *Davidson v. Carlton Bank*, [1893] 1 Q. B. 82. Such a bill of sale is also void (except as against the grantor) in respect of any chattels which are so described, of which the grantor was "not the true owner" at the time of its execution: Bills of Sale Act, 1882, s. 5; *Exp. Barnett*, 62 L. T. 264. These sections do not, however, apply to crops actually growing at the time of execution of the bill of sale, or to fixtures, plant, or "trade machinery," substituted for those specifically described: Bills of Sale Act, 1882, s. 6. A cab-driver's horses are not plant: *London, &c., Co. v. Creasey*, [1897] 1 Q. B. 768; *secus* as to motors stored in a garage: *Nat. Prov. Bank v. Charnley*, [1924] 1 K. B. 431. Where chattels, such as live farming stock, require to be replaced frequently, the description must be more specific than where they do not require to be replaced so often, as in the case of household furniture: *Davies v. Jenkins*, [1900] 1 Q. B. 133.

Previous
unregis-
tered bill
of sale.

A bill of sale by way of security is void as against a previous unregistered bill of sale by way of absolute assignment (and therefore not altogether void, *e.g.*, in favour of the grantor's wife), of the same chattels. Enquiry should therefore always be made in taking a bill of sale whether any such assignment has been previously made: *Tuck v. Southern, &c., Bank*, 42 Ch. D. 471. As

to the effect of the grantee under an unregistered bill of sale giving a registered bill of sale by way of security, see *Antoniadi v. Smith*, [1901] 2 K. B. 589.

A grantor of chattels by a bill of sale by way of mortgage is still the "true owner" of the chattels within s. 5 of the Act of 1882, and may execute a subsequent valid bill of sale of the same chattels: *Thomas v. Searles*, [1891] 2 Q. B. 408. The legal owner of chattels is the "true owner" within s. 5, whether he is also equitable owner or only trustee for another person: *Re Sarl*, [1892] 2 Q. B. 591. A donee of chattels under a voluntary deed of gift is also the "true owner" until the voluntary deed is set aside: *Harrods v. Stanton*, [1923] 1 K. B. 516. But a bailee holding goods under a hire purchase agreement with an option to purchase is not the "true owner": *Lewis & Sons v. Thomas*, [1919] 1 K. B. 319. A person entitled to a joint beneficial interest in chattels is also the "true owner": *Ex p. Pratt*, 7 Mor. 132; Bills of Sale Act, 1882, s. 5. Persons not jointly possessed of goods, but each possessing a part, cannot join so as to give a valid bill of sale over the whole: *Saunders v. White*, [1902] 1 K. B. 472. Where a wife is solely entitled to goods the husband and wife jointly are not the "true owner": *Gordon v. Goldstein*, [1924] 2 K. B. 779; nor is the husband alone: *Western v. Fairbridge*, [1923] 1 K. B. 667.

A general assignment in the body of the instrument (or, it seems, in the schedule), of all after-acquired chattels, or of all other existing chattels, makes the whole bill of sale void for all purposes, whether against the grantor or not, as not being in accordance with the statutory form: Bills of Sale Act, 1882, s. 9; *Thomas v. Kelly*, 13 App. Cas. 506. In fact, future chattels, or chattels not admitting of a specific description, cannot now be charged, with the exception of the matters mentioned in the Bills of Sale Act, 1882, s. 6, which should be (*Seed v. Bradley*, [1894] 1 Q. B. 319) described in the schedule; but a covenant to replace chattels destroyed or worn out or an assignment of the substituted chattels: *Coates v. Moore*, [1903] 2 K. B. 140; does not invalidate a bill of sale. A floating charge over the stock or assets of a business can now only be made in the case of debentures of a joint-stock company, see *post*, p. 177.

7. A bill of sale must truly state the consideration for which it was given, otherwise it is made void "in respect of the personal chattels comprised therein:" Bills of Sale Act, 1882, s. 8: *Kinnersley v. Paine*, 100 L. T. 229; but not absolutely void under s. 9 of that Act, *e.g.*, as regards the covenant to pay: *Heseltine v. Simmons*, [1892] 2 Q. B. 547. It is sufficient if the facts are accurately stated either as to their legal effect or as to their mercantile business effect, though they may not be stated with strict accuracy: *Ex p. Johnson*, 26 Ch. D. 338. The consideration need not consist of a present advance to the mortgagor: *Re Rouard*, 85 L. J. K. B. 393, but may consist, *e.g.*, of a pre-existing debt, of the payment of debts owing by the mortgagor to a third person, or of a covenant to take up current liabilities of the mortgagor, and may require statement in a recital, to which there would be no objection under the Act. No part of an alleged advance must be retained by the mortgagee for commission or otherwise, but there may be a set-off of an existing debt arising independently of the transaction in hand: *Ex p. Johnson*, 26 Ch. D. 338; *Sharp v. McHenry*, 38 Ch. D. 427; *Richardson v. Harris*, 22 Q. B. D. 268; *Re Wiltshire*, [1900] 1 Q. B. 96; *Davies v. Jenkins*, *ib.* 133. When part of the money lent is retained by the mortgagee it will not be treated as paid to the mortgagor unless it is retained to pay a debt actually due: *Parsons v. Equitable Investment Co.*, [1916] 2 Ch. 527.

"True owner."

After-acquired chattels.

As to stating consideration.

As to showing the whole transaction.

8. Every condition, defeasance, or declaration of trust not contained in the body of the bill of sale must be written on the same paper or parchment for the purposes of registration, otherwise the registration is void: *Bills of Sale Act, 1878, s. 10 (3)*; *Pettit v. Lodge*, [1908] 1 K. B. 744; *Kinnersley v. Paine*, 100 L. T. 229; *Smith v. Whiteman*, [1909] 2 K. B. 437; *Hall v. Whiteman*, [1912] 1 K. B. 683; so that a collateral promissory note avoids the bill of sale: *Monetary Advance Co. v. Cater*, 20 Q. B. D. 785. A fee paid to the mortgagee's agent for valuing the goods prior to the execution of a bill of sale on the terms that the cheque for the fee should not be cashed until the advance is made is not a condition which avoids the bill: *Graham v. Hart*, [1917] 1 K. B. 201. Where simple interest was reserved by the bill of sale, a collateral security for the principal sum secured by the bill of sale at compound interest avoided it: *Edwards v. Marcus*, [1894] 1 Q. B. 587; but not the mere deposit of a policy of assurance as collateral security: *Carpenter v. Deen*, 23 Q. B. D. 566; nor a collateral security given as surety by a third person: *Oakes v. Green*, 23 T. L. R. 560; or effected by a mortgage of leaseholds containing a covenant to repair: *Re Leber*, 52 Sol. J. 483; nor a collateral agreement that out of the advance a pre-existing debt shall be paid: *Thomas v. Searles*, [1891] 2 Q. B. 408; *Parsons v. Equitable Investment Co.*, [1916] 2 Ch. 527. In addition to this it seems that the bill of sale will be void under s. 9 of the Act of 1882, as not being in accordance with the statutory form, unless all the terms of the bargain appear upon its face: *Lee v. Barnes*, 17 Q. B. D. 77; *Watson v. Strickland*, 19 Q. B. D. 391; *Sharp v. McHenry*, 38 Ch. D. 427; *Hall v. Whiteman*, [1912] 1 K. B. 683. A collateral agreement that a bill of sale should not be made available until the grantee has exhausted certain other securities for the advance has, however, been held not to avoid the bill of sale, either as being a term for the "defeasance" of the security (*Bills of Sale Act, 1878, s. 10 (3)*), or as not being in accordance with the form in the schedule: *Bills of Sale Act, 1882, s. 9*; *Heseltine v. Simmons*, [1892] 2 Q. B. 547. But a collateral agreement made after the execution and due registration of a bill is not a "defeasance" *Lester v. Hickling*, [1916] 2 K. B. 302.

Bill of sale under £30 void.

9. A bill of sale given in consideration of any sum under £30, is absolutely void: *Bills of Sale Act, 1882, s. 12*; *Davis v. Usher*, 12 Q. B. D. 490; *Darlow v. Bland*, [1897] 1 Q. B. 125. Costs may be taken into account: *London, &c., Co. v. Jones*, [1914] 1 K. B. 147.

As to distress for rates and taxes.

10. A bill of sale does not protect chattels against a distress under a warrant for taxes or rates, *Bills of Sale Act, 1882, s. 14*; but this section does not apply where proceedings for the recovery of the rate have been taken in the County Court under s. 261 of the Public Health Act, 1875, and not by distress warrant under s. 256: *Wimbledon Local Board v. Underwood*, [1892] 1 Q. B. 836. As to covenants for payment of rates and taxes, see *post*, p. 168. The Law of Distress Amendment Act, 1908, does not apply to bills of sale; see s. 4.

Restriction on right of seizure.

11. Chattels assigned under a bill of sale are not to be seized or taken possession of by the grantee for any other than the causes specified in the *Bills of Sale Act, 1882, s. 7*, namely—(1) default in payment of the money secured at the time provided for payment, or in the performance of any covenant or agreement "contained in the bill of sale and necessary for maintaining the security"; (2) bankruptcy of the grantor (a case in which the grantee's title would generally have been defeated by the reputed ownership clause in the Bankruptcy Acts, see *ante*, p. 166), or a distress for rent, rates, or taxes; (3) fraudulent removal of the goods; (4) non-production, without reasonable excuse on demand in

writing, of the last receipts for rent, rates, and taxes: *Ex p. Wickens*, [1898] 1 Q. B. 543; (5) an execution under a judgment against the grantor. The chattels must remain on the premises after seizure for five clear days before they are removed or sold: Bills of Sale Act, 1882, s. 13; within which time the Court is empowered to interfere to restrain the removal or sale on sufficient cause: Bills of Sale Act, 1882, s. 7. This provision is, however, for the benefit of the grantor only, and does not give his landlord any rights: *Tomlinson v. Consolidated Credit, &c. Corpn.*, 24 Q. B. D. 135. A power of seizure in breach of this section will make the whole bill of sale void, Bills of Sale Act, 1882, s. 9; see *post*, p. 168.

12. A bill of sale is absolutely void unless attested as regards the execution by the grantor by one or more credible witness or witnesses, not being a party or parties: Bills of Sale Act, 1882, ss. 8, 10. A bill of sale is void as not being in the form of the schedule: Bills of Sale Act, 1882, s. 9, if the addresses and descriptions of the witnesses do not appear in the attestation clause. It is not sufficient that they appear in the affidavit of registration: *Parsons v. Brand*, 25 Q. B. D. 110; nor is an address sufficient without a description: *Sims v. Trollope*, [1897] 1 Q. B. 24; but if the bill of sale is properly executed and attested the omission from the filed copy of the signature of the grantor and the signature, address, and description of the attesting witness does not render it void if the filed affidavit supplies these particulars: *Coates v. Moore*, [1903] 2 K. B. 140.

13. A bill of sale is absolutely void, even as against the grantor, unless it is registered under the Bills of Sale Act, 1878, s. 10, within seven clear days after execution, and the registration must be renewed every five years: Bills of Sale Act, 1878, s. 11; Bills of Sale Act, 1882, s. 8. During the interval between the execution of a bill and the expiration of the seven days it seems that an unregistered bill is void against an execution creditor: *Sales Agency v. Elite Theatres*, [1917] 2 K. B. 164. Non-renewal under the Bills of Sale Act, 1878, rendered a bill of sale void only as against strangers; but now non-renewal renders it absolutely void, even as between grantor and grantee: Bills of Sale Act, 1882, s. 8: *Fenton v. Blythe*, 25 Q. B. D. 417; *Antoniadi v. Smith*, [1901] 2 K. B. 589. If the affidavit of execution be sworn before the solicitor of the grantee the bill of sale will be void: *Baker v. Ambrose*, [1896] 2 Q. B. 372. The Act of 1878 did not require the name of the grantor to be stated, and consequently registration in the name by which the grantor is not known is not invalid if the bill of sale operates under the Act of 1878: *Stokes v. Spencer*, [1900] 2 Q. B. 483.

14. The device formerly in use of evading registration by renewing the bill of sale from time to time within the time allowed for registration, was put an end to by the Bills of Sale Act, 1878, s. 9.

15. A bill of sale made or given by way of security for the payment of money by the grantor thereof, is void unless made in accordance with the form in the schedule to the Bills of Sale Act, 1882, s. 9. Omission of the receipt clause and an inaccuracy in the true copy required to be filed have been held to avoid a bill: *Burchell v. Thompson*, [1920] 2 K. B. 80; *Commercial Credit Co. of Canada, Ltd. v. Fulton Bros.*, [1923] A. C. 798. Where a bill of sale is void because it deviates from the statutory form, a prior parol agreement securing the same money on the same terms stands and can be enforced: *Bradford Advance Co., Ltd. v. Ayers*, [1924] W. N. 152. The following is a copy of the schedule:—

Attestation.

Registration.

Renewal of bill.

Bills of Sale Act, 1882, s. 9.

FORM OF BILL OF SALE.

Statutory
form of
bill of
sale.

This indenture, made the — day of —, between A. B. of —, of the one part, and C. D. of —, of the other part, witnesseth that in consideration of the sum of £— now paid to A. B. by C. D., the receipt of which the said A. B. hereby acknowledges [*or whatever else the consideration may be*], he, the said A. B., doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed, by way of security for the payment of the sum of £—, and interest thereon at the rate of — per cent. per annum [*or whatever else may be the rate*]. And the said A. B. doth further agree and declare, that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal — payments of £— on the — day of — [*or whatever else may be the stipulated times or time of payment*]. And the said A. B. doth also agree with the said C. D. that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

IN WITNESS, &c.

Signed and sealed by the said A. B., in the presence of me, E. F. [*add witness's name, address, and description*].

The impediments which the Act of 1882 has imposed in the way of securities (other than “debentures” of companies) upon chattels are such as to render such securities too precarious to be of much utility even after registration, which is absolutely necessary to make them of any avail even as against the grantor. The requirement that every “bill of sale” shall be in accordance with the form in the schedule to the Act, which contains a formal assignment of the chattels, is necessarily inapplicable to some instruments (such as a declaration of trust without transfer), which are included in the definition of a “bill of sale,” and as to ordinary bills of sale in which the chattels are assigned, has given rise to very great doubt as to the extent to which additions and variations may be introduced into the statutory form.

General
effect of
s. 9.

The rule of construction which was laid down in *Ex p. Stanford*, 17 Q. B. D. 259, viz., that a divergence is material only when it gives the bill of sale a legal effect other than it would have if drawn in the statutory form, has been much narrowed by *Thomas v. Kelly*, 13 App. Cas. 506, where it was laid down that a bill of sale is void whenever it departs from the form in anything that is characteristic of that form, for example, by the omission of the proviso as to s. 7 of the Bills of Sale Act, 1882, though such omission would not in any way alter the legal effect of the bill. But the insertion of a covenant to replace articles worn out is “for the maintenance of the security,” and not a divergence from the form in the schedule: *Seed v. Bradley*, [1894] 1 Q. B. 319.

As to the importance of avoiding unnecessary complication and proximity, see *per Fry, L.J.*, in *Ex p. Stanford, sup.*; and *per Lord Esher, M.R.*, in *Furber v. Cobb*, 18 Q. B. D. 494. All alterations or additions should be avoided, except such as are sanctioned by the reported cases or are otherwise clearly within the words in italics in the form. But joinder of an unnecessary

party does not avoid a bill: *Brandon Hill v. Lane*, [1915] 1 K. B. 250. The bill must not include anything besides personal chattels, e.g., tenant right: *Cochrane v. Entwistle*, 25 Q. B. D. 116; and see *Swanley Coal Co. v. Denton*, [1906] 1 K. B. 873. If the names and descriptions of the parties, though ambiguous, are such as would be held good in any mercantile document, the bill of sale will not be rendered void on account of that ambiguity: *Simmons v. Woodward*, [1892] A. C. 100. But see *Barron v. Potter*, [1915] 3 K. B. 593; *Re Boddington*, 84 L. J. K. B. 2119. The omission of the occupation of a married woman living apart from her husband: *Kemble v. Addison*, [1900] 1 Q. B. 430; or of the address of the grantee: *Altree v. Altree*, [1898] 2 Q. B. 267; *Neversen v. Seymour*, 97 L. T. 788; renders the bill of sale void.

Names
and de-
scriptions
of parties.

The sum secured must consist of a principal sum, which may be made payable "on or before" a certain day: *De Braam v. Ford*, [1900] 1 Ch. 142; and rateable interest, the rate of interest being clearly stated: *Myers v. Elliott*, 16 Q. B. D. 526; *Blankenstein v. Robertson*, 24 Q. B. D. 543. It may be payable by instalments, consisting partly of interest down to the time of each payment as contemplated by the statutory form: *Linfoot v. Pockett*, [1895] 2 Ch. 835; *Rosefield v. Provincial Union Bank*, [1910] 2 K. B. 781; but not by instalments consisting of principal and interest in uncertain proportions: *Attia v. Finch*, 91 L. T. 70; and the payments may be unequal, the expression in the form "by equal payments" being directory not obligatory: *Re Claver*, 18 Q. B. D. 489. Interest may be reserved in any form, e.g., 1s. in the pound: *Lumley v. Simmons*, 34 Ch. D. 698; but interest upon interest must not be reserved: *Dresser v. Townsend*, 81 L. T. Journal, 230.

As to
mode and
time of
payment.

The instalments must not consist partly of an agreed sum for interest and bonus, it being impossible to say how much is interest and how much bonus: *Myers v. Elliott*, 16 Q. B. D. 526; indeed, no bonus must be added to the sum secured: *Re Williams*, 25 Ch. D. 656. The whole amount may be made payable on failure to pay one instalment of capital with interest on the capital unpaid down to that time: *Lumley v. Simmons*, 34 Ch. D. 698; but if the instalments consist partly of capitalised interest, such a provision avoids the bill of sale, as it makes interest payable before it has accrued: *Myers v. Elliott*, 16 Q. B. D. 526; *Roe v. Mutual Loan Fund, Ltd.*, 56 L. T. 631. An inaccuracy with regard to the provisions for paying instalments, e.g., where the principal sum was not an exact multiple of the instalments agreed upon, and the last instalment must therefore be somewhat less than the amount stated, was held in *Simmons v. Woodward*, [1892] A. C. 100, not to invalidate the bill.

Bills of
Sale Act,
1882, s. 9.

The principal may be made payable in one payment with interest at a fixed date, with subsequent interest in case of default: *Watkins v. Evans*, 18 Q. B. D. 386; but must not be payable "on demand": *Sibley v. Higgs*, 15 Q. B. D. 619.

Sums which may be paid by the grantee for insurance, rent, &c., may be secured by the bill of sale, though both the amount and time of payment are uncertain: *Briggs v. Pike*, 66 L. T. 637; but a power of seizure on default of payment of such sums will invalidate the bill: *Topley v. Corsbie*, 20 Q. B. D. 350. The time for payment may depend on a contingency: *Lumley v. Simmons*, 34 Ch. D. 698; but must not be on demand: *Hetherington v. Groome*, 13 Q. B. D. 789. A bill of sale to secure a surety against whatever money he might be called upon to pay is void: *Hughes v. Little*, 18 Q. B. D. 32; and so, it seems, would be a bill of sale to secure future advances, or an account current with a bank: *Cook v. Taylor*, 3 T. L. R. 800.

Repayment must be made to the person who finds the money, to whom also the property must be assigned: *Melville v. Stringer*, 13 Q. B. D. 392, where a bill of sale mixing up several separate mortgages was held void.

Terms for the "maintenance or defeasance of the security."

With reference to provisions for the "maintenance or defeasance of the security," it is important to remember that *if a power of seizure is given on breach of covenants, whether expressly or by implication, they must be covenants "necessary for maintaining the security,"* and otherwise comply with s. 7, otherwise the bill of sale will be void as altering the legal effect of the statutory form, which provides against seizure for any cause except those specified in s. 7: *Davis v. Burton*, 11 Q. B. D. 537; *Furber v. Cobb*, 18 Q. B. D. 494. If the money is made payable on breach of covenants, a power of seizure on breach is implied: *Barr v. Kingsford*, 56 L. T. 861. If, on the other hand, no power of seizure on breach is given or implied, it is only necessary that the covenants should be terms "for the maintenance or defeasance of the security": *Topley v. Corsbie*, 20 Q. B. D. 350.

As to insurance, payment of rent, &c.

A covenant to insure and produce the receipts for premiums is "necessary for maintaining the security"; and a bill of sale containing such a covenant is good in spite of a general power of seizure in case of non-performance of any covenant or agreement: *Hammond v. Hocking*, 12 Q. B. D. 291. A covenant to pay rent, rates, and taxes, and other outgoings of the premises in which the chattels are, is also "necessary, &c.," but the covenant to produce the receipts must, if a power of seizure is given on default, comply with the Bills of Sale Act, 1882, s. 7 (4), *i.e.*, the non-production must be "without reasonable excuse," and "on demand in writing:" *Davis v. Burton*, 11 Q. B. D. 537; *Barr v. Kingsford*, *sup.* If a power of seizure is not given: *Topley v. Corsbie*, *sup.*; or is given only for the causes specified in s. 7 of the Bills of Sale Act, 1882: *Weardale, &c., Co. v. Hodson*, [1894] 1 Q. B. 598; *Cartwright v. Regan*, [1895] 1 Q. B. 900; a covenant to produce receipts on demand is good. A covenant to replace or repair goods worn out, &c., has been held "necessary for maintaining the security:" *Furber v. Cobb*, 18 Q. B. D. 494; but a covenant to bind additional (*Thomas v. Kelly*, 13 App. Cas. 506) as distinguished from substituted (*Coates v. Moore*, [1903] 2 K. B. 140) goods will invalidate the security.

As to replacing or repairing chattels.

A power for the grantee to insure or pay rents, &c., or repair, in default of the grantor doing so, with a provision that any moneys so paid by the grantee with interest shall be a charge on the property, is within the statutory form, and does not infringe s. 7, inasmuch as it gives no power to seize in default of payment; but if the moneys so paid are to be "recoverable in the same manner as the principal moneys and interest hereby secured," a power of seizure is imported for a cause not specified in s. 7 (such a stipulation not being "necessary, &c."), and the bill of sale is void: *Topley v. Corsbie*, 20 Q. B. D. 350. A covenant not to remove the chattels is a term "for the maintenance of," but *quære*, if it is "necessary for maintaining the security" so as to justify a power of seizure on breach: *Furber v. Cobb*, 18 Q. B. D., at p. 505; *Topley v. Corsbie*, *sup.*, at p. 353. A covenant by the grantor to pay interest on mortgages on the premises in which the goods might be (not confined to such mortgages as gave a power of distress over goods), a provision for the retention of the bill of sale by the grantee after payment of the amount due, or a covenant to perform the covenants in a recited indenture (not setting them out), *Lee v. Barnes*, 17 Q. B. D. 77, are all sufficient to invalidate it: *Watson v. Strickland*, 19 Q. B. D. 391.

Power for grantee to insure, &c.

Covenant not to remove chattels.

Other covenants.

A statement in the bill of sale that a covenant is "necessary for maintaining the security" is useless, and the proviso as to s. 7 does not save the

nstrument if there is in fact power to seize in some events not authorised by that section : *Furber v. Cobb*, *sup.*

A bill of sale may be executed by attorney, and the grantee is not necessarily excluded from being such attorney. Thus a power given to a creditor in default of a certain payment by the debtor, to tender to the latter a bill of sale for execution, and in case of non-execution for seven days to execute the bill as attorney for the debtor, was held good : *Furnivall v. Hudson*, [1893] 1 Ch. 335.

With regard to covenants for title, if the grantor conveys "as beneficial owner," the bill of sale is void, owing to the covenants for title imported into it by Part III. of the Second Schedule of the L. P. Act, 1925 : *Ex p. Stanford*, 17 Q. B. D. 259 ; but a covenant for further assurance may be inserted : *Re Cleaver*, 18 Q. B. D. 489 ; though it has not been held to be "necessary" so as to justify a power of seizure on default.

It seems safe to insert an express power of seizure conforming to s. 7 of the Bills of Sale Act, 1882, as this may be done, and some doubt has been expressed as to whether such a power is implied : *Re Morritt*, 18 Q. B. D. 222 ; *Watkins v. Evans*, *ib.* 386. A power to break open doors and windows for the purpose of entry, does not make the bill of sale void : *Re Morritt*, *sup.* ; *Lumley v. Simmons*, 34 Ch. D. 698. A power to seize on the bankruptcy of the grantor may be inserted if it does not exceed the power given in s. 7 : *Ex p. Allam*, 14 Q. B. D. 43 ; but it must not include composition with creditors : *Barr v. Kingsford*, 56 L. T. 861 ; or taking the benefit of any Bankruptcy Act : *Gilroy v. Bowey*, 59 L. T. 223. The cases on the power are collected in *Re Bullock*, [1899] 2 Q. B. 517.

A power of sale is implied in every bill of sale by the power of seizure. The power of sale given to mortgagees by s. 101 (1) (i) of the L. P. Act, 1925, is not incorporated by the statutory form : *Re Morritt*, *sup.* ; *Calvert v. Thomas*, 19 Q. B. D. 204 ; nor do the limitations imposed on that power by s. 103 of the same Act apply ; an express power of sale may be inserted (*ib.*). By s. 13 of the Bills of Sale Act, 1882, the chattels are not to be removed or sold for five clear days from the day they were seized ; and by the proviso of s. 7, the Court may within such five days, restrain the removal or sale, so that a power to sell on default of payment makes the bill of sale void : *Hetherington v. Groome*, 13 Q. B. D. 789. Under this section where goods have been seized in default of payment of instalments and the grantor offers to pay, the Court has power to restrain the sale : *Ex p. Cotton*, 11 Q. B. D. 301. The proceeds of sale may be made applicable to paying off incumbrances on the goods, costs of warehousing, and other expenses : *Re Cleaver*, 18 Q. B. D. 489 ; *Lumley v. Simmons*, 34 Ch. D. 698 ; but care must be taken that the words are not wide enough to cover expenses not properly allowable, as then the bill of sale will be void : *Calvert v. Thomas*, 19 Q. B. D. 204. A clause exonerating the purchaser from enquiring whether the power of sale had become exercisable : *Blaiberg v. Beckett*, 18 Q. B. D. 96 ; or allowing the grantee to take a commission on the sale as auctioneer : *Furber v. Cobb*, 18 Q. B. D. 494 ; or giving him power to take the goods himself at a valuation : *Lyon v. Morris*, 19 Q. B. D. 139 ; are each sufficient to avoid the bill of sale.

If an instrument is void under s. 9, it is void only as regards the "personal chattels" comprised in it. If it refers also to "chattels real" it may be effective as regards them : *Re Isaacson*, [1895] 1 Q. B. 333 ; *Re N. Wales Produce, &c., Co.*, [1922] 2 Ch. 340. If the instrument is void the covenant for payment is void also : *Smith v. Whiteman*, [1909] 2 K. B. 437.

An actual and completed sale, followed by a hiring agreement, if a separate

Execution by attorney.

Covenants for title.

Power of seizure.

Power of sale.

Application of proceeds of sale.

Effect of invalidity.

Evasion.

of the
Acts by
sale and
re-hire.

Act of
1882,
s. 17.
Debentures.

and distinct dealing, does not come within the Bills of Sale Acts even if the effect of the whole is to secure money. The case is otherwise if the sale, though actual, is only part of one security intended to be completed by a hire agreement: *Beckett v. Tower Assets Co.*, [1891] 1 Q. B. 638, *Maas v. Pepper*, [1905] A. C. 102.

By s. 17 of the Act of 1882 it is enacted that "Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company": see *Read v. Joannon*, 25 Q. B. D. 300 and 34 Sol. J. 727, 734; 35 Sol. J. 255.

As to the meaning of "incorporated," see *Clark v. Balm Hill & Co.*, [1908] 1 K. B. 667. An industrial society is not a "company" within the meaning of s. 17: *G. N. Rly. Co. v. Coal Co-operative Society*, [1896] 1 Ch. 187. *Re N. Wales Produce, &c., Co.*, [1922] 2 Ch. 340. The term debenture in the ordinary meaning imports a debt, an acknowledgment of a debt, and a covenant to pay; and an instrument that falls within this ordinary meaning is a debenture under this section, and if secured on the goods, chattels, and effects of an incorporated company is excluded from the operation of the Bills of Sale Acts: *Edmonds v. Blaina Furnaces Co.*, 36 Ch. D. 215; *Levy v. Abercorris Slate, &c., Co.*, 37 Ch. D. 260. So is a charge to cover debentures: *Richards v. Kidderminster Overseers*, [1896] 2 Ch. 212; and also, apparently, any mortgage or charge of an incorporated company for the registration of which other provisions have been made by the Companies Clauses Act, 1845, or the Companies C. Act, 1908; see *Re Standard Manufacturing Co.*, [1891] 1 Ch. 627; *Nat. Prov. Bank of England v. United Electric Theatres*, [1916] 1 Ch. 132. Palmer, 12th ed., pt. 3, p. 182. A mere memorandum of deposit of title deeds, as security for a floating balance, not admitting any debt, or containing a promise to pay, is not a debenture: *Topham v. Greenside, &c., Co.*, 37 Ch. D. 281.

A debenture given for a past debt may constitute a fraudulent preference within s. 210 of the Companies C. Act, 1908: *Re Jackson & Bassford, Ltd.*, [1906] 2 Ch. 467.

Mortgages or charges (as defined by s. 93 of the Companies C. Act, 1908), given by a company must be registered under that section on pain of being void against the liquidator and any creditor of the company: see also *post*, p. 176, note.

XXXVI.

BILL of SALE of PERSONAL CHATTELS, according to the
STATUTORY FORM to be REGISTERED. With VARI-
ATIONS (a).

THIS BILL OF SALE (b) made PARTIES, A., mtgor, 1 (c) ; Parties.
B., mtgee, 2 (d) : WITNESSETH that, in conson of the sum of
£—— now pd to the sd A. by the sd B., the rect (e) of wch the
sd A. hby acknowes, he, the sd A., doth hby assn unto the sd Testa-
B. ALL & singr the several chattels & things specifically described tum.
in the schdle hto annexed by way of secy for the paymt of the
sum of £—— & intt thron at the rate of —— p.c. p.a. : AND THE
sd A. doth further agree & declare that he will duly pay to the Covenant
sd B. the ppal sum afsd by eql —— paymts of £—— on the —— for pay-
day of ——, &c., togr with the intt due at the respective times ment.

(a) See *ante*, pp. 158 *et seq.*, note.

(b) The statutory form describes the deed as an indenture, but by s. 57 of the L. P. Act, 1925, any deed may be described at the commencement thereof or otherwise as a deed or otherwise in accordance with the nature of the transaction intended to be affected.

(c) Care must be taken correctly to describe the grantor's name, residence, and occupation in the bill of sale, although it is in the affidavit accompanying registration that the statute requires the description : see the Act of 1878, s. 10 (2). As to the names and descriptions of the parties, see *Simmons v. Woodward*, [1892] A. C. 100. and cases collected, *ante*, p. 167. The name and address of the grantee must be given, *Altree v. Altree*, [1898] 2 Q. B. 267 ; *Neverson v. Seymour*, 97 L. T. 788.

(d) The following variations may be made where the security is given under pressure for an antecedent debt :— Variation
where
security
given
under
pressure.

“ WHAS the sd A. is indebted to the sd B. in the sum of
£—— ; AND WHAS the sd B. has commenced an action in the
—— Divon agst the sd A. for the recovery of the sd sum of
£—— : AND WHAS it has been agrd betn the sd A. & B. that
the sd B. shd stay all proceedings in the sd action upon
havg the repaymt of the sd sum of £——, togr with his
costs of the sd proceedings amtg to £——, with intt at
the rate hrinar mentd seed in mner hrinar appearg : NOW
THIS DEED (f) made in psuance of the sd agrmt & in conson
of the sd sum of £—— so owing by the sd A. to the sd B. as afsd,
& of the premes, WITNESSETH, &c.”

(e) Where the bill of sale is given for a present advance, the receipt clause is necessary : *Davies v. Jenkins*, [1900] 1 Q. B. 133, and cases collected, *ante*, p. 163.

(f) See note (b), *supra*.

Proviso making principal sum payable in certain events.

Power of seizure and sale (k).

Trusts of sale moneys.

Events in which principal to be payable.

of paymt of the instalmts of the ppal (f) [or covenant to pay the whole ppal sum with intt on a fixed date, & subseq intt on default, pp. 15, 17, forms 1 & 2] (g) : PROVD ALWAYS, & it is hby agrd & decld that [if the sd A., shl at any time make default in the paymt of any of the sd instalmts or intt or any pt throf resply for the period of thirty days after the time hrinbfe appted for the paymt throf or] (h), if any event (i) mentd in section 7 of the Bills of Sale Act (1878) Amendmt Act, 1882, shl happen, the whole of the sd ppal moy [wch shl for the time being remain unpaid] with the intt due thron up to that time, shl forthwith become payable : AND IT IS HBY agrd & declared that the sd B., may, on the happeng of any of the events mentd in section 7 of the sd Act, seize or take posson of all or any of the sd chattels & things, & either remain in posson throf witht removg the same, or at any time after the expiron of five clear days from the day they were so seized or taken posson of, & subjt to the provons of the sd Act, remove & sell the sd chattels & things or any of them either by public auction or private contract, & may, out of the moys arising from the sale, retain the ppal sum afsd, or so much throf as may for the time being remain

(f) See *Rosefield v. Provincial Union Bank*, [1910] 2 K. B. 781.

(g) Forms 1, 2, and 4, pp. 29, 30, might probably be safely inserted ; but it is better to avoid all experiments.

(h) Or, "in paymt of the sd sum of £—— & intt or any pt throf at the time hby appted for paymt throf." The words in brackets can be omitted if the principal is payable in one sum.

(i) It may be thought desirable sometimes to set out the events specified in the section in full, omitting default in payment, namely, "if the sd A., shl make default in the pformce of any covt or agrmt hrin contd & neey for maintaing this secy, or shl become a bkpt, or suffer the sd goods or any of them to be distrained for rent, rates, or taxes, or shl fraudulently either remove or suffer the sd chattels & things or any of them to be removed from the premes where they may be, or shl not witht reasble excuse upon demand in writg by the sd B., produce to him his last recets for rent, rates, & taxes, or if execution shl have been levied agst the goods of the sd A., under any judgmt at law ;" and in the next clause, "If the sd A. shl make default in paymt of the sum or sums of moy hby secd at the time hrin provd for paymt, or on the happeng of any of the events mentd in the last clause, &c."

(k) Cf. *Lumley v. Simmons*, 34 Ch. D. 698.

unpaid, & the intt then due, togr with all costs, charges, expses, & paymts pperly incurred or made in maintaing, defendg or realisg his or their rights hrunder (l), & shl pay over the surplus (if any) to the sd A., AND the sd A. hby further agrees with the sd B. that he, the sd A. durg the continue of this secy, will not remove the sd chattels & things or any of them from the premes where they may at any time be witht the consent in writg of the sd B., AND will not permit or suffer the sd chattels & things or any of them to be destroyed or injured, or to deteriorate in a greater degree than they wd deteriorate by the reasble use & wear throf, & will, whenever any of the sd chattels & things are [destroyed] injured, or deteriorated forthwith [replace] repair & make good the same [so as at all times to keep up the value of the sd chattels & things to the sum of £—— at the least], AND will keep the sd chattels & things insured agst loss or damage by fire, &c., *continue as in covenant to insure*, p. 40, f. 4, *except the power for the mtgee to insure on default*, AND will from time to time pay all rents, rates, taxes, assessmts, & other outgoings payable in respt of the premes where the sd chattels & things or any of them may at any time be within seven days after the same shl resply become payable, & will on the expiron of such seven days & on demand in writg by the sd B. (unless the sd A. shl have a reasble excuse to the contrary), produce to the sd B., the last rect or rects for such rents, rates, taxes, assessmts & outgoings, AND it is hby agrd & declared that if default shl at any time be made by the sd A. in [replacg or] repairing, or in insurg or keepg insured the sd chattels & things, or in payg the sd rents, rates, taxes, assessmts & outgoings in accdee with the respective covts hrinbfe contd, it shl be lawful for the sd B. to [replace or] repair, or to insure or keep insured the sd chattels & things, or to pay the sd rents, taxes, assessmts & outgoings (as the case may be), & that all moys expended by him,

Covenant by mort-gagee not to remove the chattels. Nor to suffer them to be destroyed, &c.

And to insure.

And to pay rent, rates, taxes, &c. (a).

Power for mort-gagee to insure, repair, &c.

(l) " Or in & about enterg upon the premes where the sd chattels & things or any of them may be, & in discharging any distress execution or other incumbce on the sd chattels & things or any of them, & in seizg, takg, retaing, & keepg posson of the sd chattels & things or any of them, & in & about the carriage, removal, warehousg, valug, or sale (includg the cost of inventories, catalogues, or advertisg) of the sd chattels & things or any of them ; " see *ante*, p. 168, note.

Variation as to expenses.

(a) Cf. *Hammond v. Hocking*, 12 Q. B. D. 291.

Power for
mort-
gages to
enter and
view the
chattels.
Proviso
as to
seizure.

for any of the sd pposes togr with intt thron at the rate of five p.c. p.a. from the time of the same havg been expended, shl on demand be repaid to him by the sd A., & until such paymt shl be a charge upon all the sd chattels and things (b), AND that it shal be lawful for the sd B. at all reasble times durg the continuee of this seey, to enter into & upon the premes where the sd chattels & things may at any time be to view the state of the sd chattels & things & to take inventories throf : PROVD ALWAYS, that the chattels hby assned shl not be liable to seizure, or to be taken posson of by the sd B. for any cause other than those specified in s. 7 of the Bills of Sale Act (1878) Amendmt Act, 1882.

IN WITNESS, &c. (c).

The Schdle above referred to.

The schdle, in the case of fixtures, plant, or trade machinery, may conclude with the words, " & any fixtures, plant, or trade machinery wch shl be used in, attached to, or brought upon the sd premes in substiton for any of the like fixtures, plant, & trade machinery above described " (d).

Signed & sealed by the sd A. in the presence of me, C., *add witness's name, address, & description (e).*

(b) Care must be taken that the deed does not give a power of seizure for nonpayment of these moneys : see *ante*, p. 169.

(c) This deed must be registered : see *ante*, p. 165.

(d) See s. 6 (2) of the Act of 1882, and *ante*, p. 162, par. 6. As to the description, see *Davies v. Jenkins*, [1900] 1 Q. B. 133.

(e) The failur of the witness to add his address and description avoids the bill of sale : *Sims v. Trollope*, [1897] 1 Q. B. 24. As to what is a sufficient address, see *Greenham v. Child*, 24 Q. B. D. 29.

XXXVII.

MORTGAGE by a LIMITED COMPANY of a FREEHOLD and LEASEHOLD COLLIERY (a) and FIXED MACHINERY, &c., to secure an ACCOUNT CURRENT with a BANKING FIRM where the security is NOT intended to be a BILL OF SALE (b).

PARTIES, A., B. & Co., Ltd. (hereinafter called the borrs, which Parties. expression shd include the estate owners or estate owner for the time

(a) The mortgage of the colliery passes by implication the business of working it: *Gloucester County Bank v. Rudry, &c., Co.*, [1895] 1 Ch. 629; but as to working peat, see *Stamford, &c., Co. v. Keeble*, [1913] 2 Ch. 96.

(b) As to chattels and fixtures separately assigned and charged, see *ante*, p. 162. A legal mortgage of freehold property passes to the mortgagee as part of the security and without mention, all fixtures upon it: *Mather v. Frazer*, 2 K. & J. 536; *Olimie v. Wood*, L. R. 3 Ex. 257, L. R. 4 Ex. 328; *Holland v. Hodgson*, L. R. 7 C. P. 328; *Gough v. Wood*, [1894] 1 Q. B. 713; *Hobson v. Gorringe*, [1897] 1 Ch. 182; *Reynolds v. Ashby & Son*, [1904] A. C. 466; and see s. 62 (1) of the L. P. Act, 1925; and the rule is the same as regards a mortgage of leasehold property: *Southport, &c., Banking Co. v. Thompson*, 37 Ch. D. 64; *Reynolds v. Ashby, sup.* The mortgagee by virtue of the mortgage becomes the legal owner of the fixtures as part and parcel of the property demised or charged, subject however, to the mortgagor's right of redemption. And if the mortgagee improperly severs the fixtures to the detriment of the mortgagor the latter can recover damages but no more: *Re Rogerstone Brick & Stone Co.*, [1919] 1 Ch. 110, *per* Swinfen Eady, M.R., at p. 124.

Chattels affixed after the date of the mortgage: *Meux v. Jacobs*, L. R. 7 H. L. 481; and replaced fixtures: *Monti v. Barnes*, [1901] 1 K. B. 205; also follow the destination of the property to which they are affixed. In cases where the circumstances are such as to give rise to an implied authority from the mortgagee to the mortgagor to remove fixtures in the ordinary course of the business of the latter, a title to trade fixtures separated from the inheritance during the continuance of the mortgagor's possession may be acquired by third persons as against the mortgagee: *Gough v. Wood*, [1894] 1 Q. B. 713; but a covenant on the part of the mortgagor contained in the mortgage deed not to remove trade fixtures is inconsistent with any such implied authority: *Ellis v. Glover*, [1908] 1 K. B. 388; and in any case the authority is determined by the entry of the mortgagee into possession: *Hobson v. Gorringe*, [1897] 1 Ch. 182; *Reynolds v. Ashby, sup.*; *Ellis v. Glover, sup.* See the cases discussed, 15 L. Q. R. 165.

As to the removal of trade fixtures by an equitable mortgagee of leaseholds after forfeiture of the lease, see *Re Glasdir Copper Works*, [1904] 1 Ch. 819, discussed, 48 Sol. J. 366.

The position of a chargee as distinct from a mortgagee by way of legal mortgage is the same, so far as his security extends, as that of a legal mortgagee since "conveyance" mentioned in s. 62 (1) of the L. P. Act, 1925, is defined by s. 205 (1) (ii), as including a charge. Charges.

being in respect of the fee simple & the term resp'tly of and in the ppty hby mtged), 1; D., E., & F., carrying on business in

Fixed
"trade
ma-
chinery."

Notwithstanding the provisions of the Bills of Sale Acts it has been decided (1) that fixed "trade machinery," as defined by s. 5 of the Act of 1878, passes with other fixtures as part of the security, although the mortgage deed contains no express mention of fixtures: *Re Yates*, 38 Ch. D. 112; (2) that fixed "trade machinery" as so defined passes by the description of "all fixtures;" and will still pass under that description, although there is contained in the mortgage deed an additional description of fixed power and other machinery such as by s. 5 of the Act of 1878 is excepted from the definition of trade machinery: *Southport, &c., Banking Co. v. Thompson*, 37 Ch. D. 64; (3) by Kekewich, J., in *Re Brooke*, [1894] 2 Ch. 600, that the express inclusion in the mortgage security of fixed "trade machinery" by reference to a schedule has not the effect of rendering the mortgage *pro tanto* a bill of sale; (4) by Stirling, J., in *Small v. National Provincial Bank of England*, [1894] 1 Ch. 686, that the specific mention of fixed "trade machinery" in connection with moveable chattels constitutes an assurance of chattels and trade machinery such as will be invalid, unless complying with the provisions of the Bills of Sale Acts. Where, therefore, fixtures (including fixed trade machinery) constitute an important part of the proposed security, it will generally be advisable to recite the title thereto of the mortgagor, as in note (a), p. 177, and to assign all fixtures by a general description, as in note (d), p. 177, thus avoiding all risk of any inference to which the reference to a schedule in the parcels might give rise that any right in the trade machinery is intended to be conferred upon the mortgagee apart from the land. The chief danger attending a specific description of fixtures in the parcels is that items of furniture or machinery which are not fixtures might be inadvertently included and the case brought within the mischief of the decision in *Small v. National Provincial Bank of England*, *sup.*

Power
to sell
fixtures.

The statutory power of sale conferred on legal mortgagees of freehold and leasehold land by ss. 88 (4), 89 (4) of the L. P. Act, 1925, extends to the absolute or other interest in fixtures and chattels affected by the charge. The right to foreclose and to take possession of land is similarly extended to fixtures and chattels on it.

Power to
sell sepa-
rately.

If express power is given to sell fixed trade machinery apart from the land, the mortgage deed *quâ* the fixed trade machinery is a bill of sale and void *pro tanto*; *Ex p. Barclay*, L. R. 9 Ch. 576, and see *Re Yates*, 38 Ch. D. at p. 120; *Climpson v. Coles*, 23 Q. B. D. 465; and *ante*, p. 161. It is desirable, therefore, to insert a clause expressly excluding the right of severance, see *post*, p. 179, note (a).

If bad as to chattels and fixed "trade machinery" the mortgage will remain good as to the land and other fixtures: *Re Burdett*, 20 Q. B. D. 310; *Re London, &c., Co.*, 58 L. T. 798.

As to
com-
panies.

It will perhaps be safer to assume that a mortgage in the form in the text is not a "debenture" within the exemption in s. 17 of the Bills of Sale Act, 1882, and if it is desired to include chattels, to do so, if possible, by way of an issue of a debenture or debentures of the ordinary type: see *ante*, p. 170, note. On the general subject of mortgages by companies, see 2 *Dav. Prec.*, 4th ed., p. 673, note; *Palmer*, 12th ed., pt. 3, 182, and as to registration, the Companies C. Act, 1908, s. 93; L. C. Act, 1925, s. 10 (5); L. P.

co-ptnp togr as bankers at — under the firm name of D. & Co. (hrinar called the mtgees), 2 : WHAS the borrs carry on their business of colliery proptors at the collieries & works known as, &c., situate, &c., wch are partly of freehd & partly of leasehd tenure ; AND WHAS the borrs are este owners in respect of the fee simple of the freehd ppty hby mtged & also of the leasehd ppty hby mtged in respect of the term for wch the same is held under a lease dated — & made — whby, *recite ming lease to the mtgors* (Vol. I., p. 452), *setting out the parcels & the clauses havg referce to the erection & removal of machinery, &c.* (a) ; AND WHAS the borrs keep an acct for the pposes of their business with the mtgees : AND WHAS the mtgees have already grted & may hrafter grt accomodon to the borrs in the usual course of such banking business, & it has been agrd that all moys now owing or wch shl hrafter become owing on genl balce of acct or orwise from the borrs to the mtgees with intt shd be seed in maner hrinar appearg : NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows :—

Recitals.
Mort-
gagors
carry on
business.
Title to
freeholds.
Title to
lease-
holds.

Account
current
kept (b).
Advances
by bank.

Wit-
nesseth.

Demise.

1. Covt to pay balce on acct current, p. 21, f. 11.
2. The borrs as benefl owners hby demise (c) unto the mtgees, *First Freehold parcels*, Vol. I., p. 480 (d) ; AND SECONDLY,

Act, 1925, s. 205 (3), and *Cornbrook Brewery Co. v. Law Debre. Corpn.*, [1904] 1 Ch. 103 ; *Re Harrogate Estes., Ltd.*, [1903] 1 Ch. 498 ; *Re Yolland, &c., Ltd.*, [1908] 1 Ch. 152 ; *Cunard Steamship Co., Ltd. v. Hopwood*, [1908] 2 Ch. 564 ; *Re Law Car, &c., Corpn.*, [1911] W. N. 91 ; *Re Monolithic Building Co.*, [1915] 1 Ch. 643. Compare Prec. L., *post*, of an equitable mortgage to bankers ; for a form of mortgage to a Banking Company constituted under 7 Geo. 4, c. 46, see 2 Dav. Prec., 4th ed., pt. 2, p. 353 ; and see the note to that Precedent, p. 351, as to the constitution of Banking Companies.

(a) If appropriate insert “ AND WHAS the borrs are entitled to certn fixed machinery, bldgs, fixed engines, rails, turntables, erections, & other fixtures erected or fixed on the sd freehd & leasehd ppty [some of wch are specified in the schdle hto].” See p. 176, note. The words in brackets and the schedules to which they refer are inserted solely in referenc3 to the removal clause contained in note (f), p. 178, and should not be repeated in the description of parcels.

Title to
fixed ma-
chinery.

(b) See L. P. Act, 1925, s. 94 (2).

(c) Or, “ hby charge by way of legal mtge, ALL, &c., with the paymt to the mtgees of the ppal moy intt & other moy hby covtd to be pd by the borr,” omitting the proviso for redemption.

(d) If appropriate insert “ AND ALSO all & singr the fixed machinery, bldgs, fixed engines, rails, turntables, erections,

Haben-
dum.

Proviso
for
redemp-
tion.

Covenant
to keep
up value
of ma-
chinery,
repair,
and in-
sure.

ALL THOSE the pieces of land, mines or beds of coal, powers, liberties, authorities & premes by the recited lease demised or grted; *habendum*, p. 22, f. 1, & p. 23, f. 2; *Proviso for redmon*, p. 24, f. 1, saying "term & sub-term."

3. The borrs hby covt with the mtgees, AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

(i) That (f) the borrs or their successors in business will at all times durg the continuance of this secy keep up the total value of the fixed machinery & other fixtures for the time being erected on or affixed to the freehd premes hby mtged, to the sum of £—— at the least, & will keep up the total value of the fixed machinery & other fixtures for the time being erected on or affixed to the leasehd premes hby mtged in accdce with the covts by the lessees in the recited lease, to the sum of £—— at the least, and also will keep up all the sd bldgs, fixed machinery, & other fixtures for the time being erected on or affixed to the premes hby mtged, in good repair & perfect workg order, & will keep such of the same premes as are or shl be of an insurable nature insured agst loss or damage by fire, *continue covt to repair & insure*, p. 40, f. 4, or p. 43, f. 5, *addg after the word "borr" "successors in business."*

(ii) *Power to mtgee to have buildings & machinery surveyed*, p. 49, f. 18.

[(iii) *Covenant against registron of freeholds if required*, p. 45, f. 10.]

& other fixtures now erected on or affixed to the premes hby demised [charged] or any pt throf." Some practitioners add after the general description of existing fixtures a general description of future fixtures, but the additional words are mere surplusage (see *ante*, p. 175, note (b)), and are better omitted.

Covenant
not to
remove
fixtures.

(f) If appropriate add: "THAT the borrs or their successors in business will not during the continue of this secy remove the fixed machy, fixed engines, rails, turntables, or other fixtures specified in the schdles hto respdy, or any of them, or any pt thof, witht the permission in writg of the mtgees [two of the managers for the time being of the sd Bank] unless such removal shl be rendered neey by any of the sd premes being worn out or injured, & in such case shl forthwith replace the premes worn out or injured by others of at least equal value: & further, &c." As to the effect of this clause, see *ante*, p. 175, note (b).

- (iv) *Clause excluding s. 103 of L. P. Act, 1925, p. 61, f. 8.*
 (v) *Power to sell leasehds in lots by way of underlease (a), p. 61, f. 11.*
 (vi) *Receipt clause in mortgage to bank, p. 71, f. 3.*
 (vii) *Charge of mtgee's expenses with intt, p. 74, f. 11, saying instead of "the borrs," "the borrs or their successors in business."*
 [(viii) *Provision as to changes in mtgee firm, p. 73, f. 9.*]
 [4. *Attornment clause, p. 75.*]
 5. *Interpretation of "successors in business," p. 75, f. 14.*

IN WITNESS, &c. (b).

[*First Schdle, specifying fixtures annexed to the freehds.*]

[*Second Schdle, specifying in the first part the fixtures annexed to the leasehds which the mtgors are not entitled to remove, & in the second part such of the same as the mtgors are entitled to remove (c).*]

(a) If appropriate add: "PROVD ALWAYS that the sd fixed machy, &c., shl not be sold separately or apart from the bldgs or land to wch the same are annexed."

Fixtures not to be sold separately.

If the fixtures do not comprise any "trade machinery" as defined in the Bills of Sale Act, 1878, s. 5 (see *ante*, p. 161), the following power to deal with the fixtures separately from the land or buildings may be substituted for the clause in the text, and will in many cases be useful:—

"PROVD ALWAYS that the sd *describe fixtures, wch should not comprise any item of 'trade machinery,' as so defined* (other than such as are affixed to the sd leasehd premes & are irremovable) may be sold either togr with or separately & apart from the land or bldgs to wch the same may be annexed."

Power to sell fixtures separately.

This clause will not make the fixtures "personal chattels" under the Bills of Sale Act, 1878, see s. 7, the effect of which is to exclude the operation of *Ex p. Daglish*, L. R. 8 Ch. 1072, in cases of fixtures not coming under the head of "trade machinery," as defined by the Act of 1878: see *Re Yates*, 38 Ch. D. at p. 120: *Johns v. Ware*, [1899] 1 Ch. 359.

(b) If only part of the premises demised by the lease are mortgaged: add Clause 5 (vii) of Prec. IV., p. 89.

(c) Care must be taken not to include any movable chattels other than those which, though detachable, form an essential part of the fixed machinery: see *Mather v. Frazer*, 2 K. & J. 536.

XXXVIII.

MORTGAGE *by* LIMITED COMPANY of FREEHOLD and LEASEHOLD (*m*) IRONWORKS, MINES, and FIXED MINING PLANT, for securing payment of EXISTING and FUTURE BILLS of EXCHANGE, the security NOT being intended to be a BILL of SALE (*a*).

PARTIES, the — Co., Limited, a limited Company registered under the Companies Acts, 1908–1917 [the Companies Acts, 1862 —] (hrinar called the borrs, which expression *&c. as in Prec. XXXVII.*), 1; A., *mtgee* (hrinar called the *mtgee*), 2:

Recitals.
Drawing
of bills.

Agree-
ment.

Wit-
nesseth.

Demise.

WHAS the borrs have drawn on the *mtgee*, & the *mtgee* has accepted the bills of exchange mentd in the schdle hto, & the borrs may from time to time, in the usual course of business, draw on the *mtgee* & the *mtgee* may accept other bills of exchange; *Recite the title of the borrs to freehds & leasehds as in last precedent*: AND WHAS it has been agrd betn the borrs & the *mtgee* that the paymt of the sd psnt & future bills of exchange at maturity shl be seed in mner hrinar appearg: NOW THIS DEED made in psuance of the sd agrmt, & in conson of the premes (*b*), WITNESSETH as follows:—

1. The borrs as **benefl owners** hby demise (*c*) unto the *mtgee* ALL & SINGR the iron mines & other mines & minerals, lands, ppty, & works (*d*), wch are now or may at any time (*e*) durg the

(*m*) See *ante*, p. 89, note (*a*).

(*a*) As to excluding chattels from the security, as to trade machinery, and as to registration, see the last precedent, and notes thereto.

As to
merger of
simple
contract
in speci-
alty.

(*b*) The covenant for payment is omitted, lest it should prejudice the remedy on the bills, under the technical doctrine as to the merger of a simple contract in a specialty: see *ante*, p. 21, note (*f*); *Commissioner of Stamps v. Hope*, [1891] A. C. 476; 2 Dav. Prec., 4th ed., pt. 2, 608, note.

(*c*) Or, “hby charge by way of legal *mtge*, ALL, &c., with the paymt to the *mtgee* of the ppal moy intt & other moy hby secured,” omitting the proviso for redemption.

(*d*) If appropriate, add “bldgs, erections, furnaces, foundries, fixed machines & engines, railways, tramways, roads, & machinery & other things of the nature of fixtures.” See *ante*, p. 175, note (*b*).

(*e*) An assurance of property to be acquired in the future cannot pass the legal estate; but it operates in equity: *Norton on Deeds*, 507. *Tailby v. Official Receiver*, 13 App. Cas. 523; *Re Lind*, [1915] 2 Ch. 345; *Horwood v. Millar's Timber, &c., Co.*, [1917] 1 K. B. 305, at p. 315. Such an assurance must be made to persons ascertained at the time of its execution: *Re Dent*, [1923] 1 Ch. 113. Equitable interests of this nature in land can still be

continue of this seey be held by or belong to the borrs, *Habendum*, p. 22, f. 1, p. 23, f. 2; PROVD ALWAYS that if the borrs shl, at the maturity throf resply, provide the mtgee with sufficient funds to pay the several bills of exchange mentd in the sd schdle & every other bill of exchange wch may hrafter be drawn on the mtgee by the borrs & accepted by the mtgee, then the respective terms hby created shl absolutely cease & determine & become merged in the respt reversions immedly expectantthron.

Proviso
for
redemp-
tion.

2. The borrs hby covt with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(ii) *Covenant agst registron of freeholds if required*, p. 45, f. 10.]

(iii) *Power of sale*, p. 55, f. 1, “at any time or times after the execution of this deed,” *the power not to be exercised* “until default shl have been made in paymt at maturity of some or one of the bills of exchange, the paymt whrof is hby seed,” *omitting the rest of the proviso ; & the trusts of the purchase moys to be* “in the first place . . .” *as in the form*, “AND in the next place to apply such moys in or towards paymt of such of the sd bills of exchange as shl have arrived at maturity ; AND in the next place, in case any of the sd bills shl not have arrived at maturity, to pay into the — Bank, or some other bank to be selected by the mtgee, the residue of the sd moys, or so much throf as shl be sufficient for the paymt of such last-mentd bill or bills and the repaymt of the costs (if any) incurred by the mtgee by virtue of this provision, & from time to time to apply the same in or towards paymt of such bills or any of them at maturity, & repaymt of any costs so incurred by the mtgee as afsd & then to pay the surplus (if any) of the sd pchase moys to the borrs.”

Power
of sale.

(iv) *Power to sell leaseholds in lots by way of underlease* (b), p. 61, f. 11.

created : L. P. Act, 1925, s. 4 (1) : and when the mortgagor company becomes estate owner of after acquired lands, they will be bound to give effect to these interests : L. P. Act, 1925, s. 3 (1) (c).

(b) If appropriate, add as a separate paragraph, “The sd bldgs, erections, furnaces, foundries, fixed machines & engines, railways, tramways, roads, & machinery, & other things of the nature of fixtures shl not be sold separately or apart from the land to wch the same are annexed.”

(v) *Charge of mtgee's expenses with intt*, p. 74, f. 11, omitting the words "on the respective days hrinbfe appointed for paymt of intt on the sd ppal sum of £——."

IN WITNESS, &c. (c).

The Schedule above referred to..

XXXIX.

MORTGAGE of a BUILDING laid out in FLATS, both MORTGAGOR and MORTGAGEE being LIMITED COMPANIES (c).

Parties.	<i>PARTIES</i> , A. & Co., Ltd., a limited Co. registered under the Companies Acts, 1908-1917 [the Companies Acts, 1862, ———] whose registered office is at ——— (hrinar called the borrs, defined as in <i>Prec. I.</i>), 1; B. & Co., Ltd., &c., similar
Recitals.	<i>description</i> (hrinar called the mtgees), 2. <i>Recite title of borrs</i> ,
Title.	p. 7, f. 1, adding "subj't to the leases & tenancy agrmts affecting the same [pts throf] wch are specified in the first schdle hto & to the restrictive covts imposed thron by the several indres [deeds] specified in the second schdle hto [& registd under the L. C. Act, 1925 (d)]"; <i>agrmt for loan</i> , p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt &
Wit- nessesth.	<i>conson & receipt clause</i> , p. 14, f. 1, WITNESSETH as follows:— 1. <i>Covenant for paymt of ppal & intt & intt after default</i> , p. 15, f. 1, & p. 17, f. 2.
Demise.	2. The borrs as benefl owners hby demise (e) unto the mtgees, <i>Parcels</i> , Vol. I., pp. 480 <i>et seq.</i>
Haben- dum.	<i>Habendum</i> , p. 22, f. 1, addg, subj't as to the pts throf resply affected thereby to the sd leases (f), & tenancy agrmts, so far as

(c) The mortgage must be registered under the Companies C. Act, 1908, s. 93, within 21 days of execution, see *ante*, p. 176.

(d) See L. C. Act, 1925, s. 10 (1), Class D. (ii).

(e) Or, "hby charge by way of legal mtge, ALL, &c. with the paymt to the mtgees of the ppal money intt & other moy hby covtd to be pd by the borr," omitting the proviso for redemption.

(f) It was decided in *Davenport v. Smith*, [1921] 2 Ch. 270, that a conveyance of the freehold subject to subsisting leases coupled with the knowledge by the grantee of past breaches of covenant amounted to a waiver of such breaches, and words negating any such result would have been ineffectual before 1926: *Matthews v. Smallwood*, [1910] 1 Ch. 777, 786.

the same may be now subsistg & as to all the ppty hby mtged subjt to the proviso for redmon hrinar contd: *Proviso for redmon*, p. 26, f. 1.

3. The borrs hby covt with the mtgee, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) *Provision for payment by instalments*, p. 30, f. 4.

(iii) *Power to anticipate instalments*, p. 31, f. 5.

(iv) *Covenant to repair & insure (a)*, p. 40, f. 4, or p. 43, f. 5.

(v) *Covenant to insure against suspension of rent (b)*, p. 43, f. 6.

(vi) *Power to insure against accidents, &c.*, p. 44, f. 7.

[(vii) *Covenant agst registration if required*, p. 45, f. 10.]

(viii) *Covenant to keep accounts*, p. 47, f. 14.

(ix) *Covenant to perform covenants of underlease*, p. 48, f. 15.

(x) *Covenant to appoint a manager of unlet portions*, p. 48, f. 16.

(xi) *Power to have buildings, &c., surveyed*, p. 49, f. 18.

(xii) *Power to have property valued*, p. 50, f. 19.

(xiii) *Events in which power of sale shl be exercisable*, p. 58, f. 7, including sub-clauses (i) & (v).

(xiv) *Clause restricting mtgors' power of leasing*, p. 65, f. 2, with variation in note (f).

(xv) *Power to manage, grant leases, &c.*, p. 68, f. 5.

(xvi) *Consents, &c., of either company, how to be given*, p. 73, f. 10.

(xvii) *Charge of mtgees' expenses with intt*, p. 74, f. 11.

IN WITNESS, &c.

Schedules.

The first cited decision was, however, doubted in *Atkin v. Rose*, [1923] 1 Ch. 522. Section 65 (2) of the L. P. Act, 1925, removes the difficulty in the case of assurances executed after 1925 by providing that where a contrary intention is expressed, an assurance of a legal estate made subject to another not in existence immediately before the date of the assurance shall not operate as a reservation.

(a) If there are lifts on the property say "and in perfect working order." Generally in cases of this nature the leases of the flats do not contain covenants by the lessees to insure, hence the provision as to the application of the insurance moneys (p. 43, note) should as a rule be added.

(b) This provision should be added where the leases or tenancies of the flats contain provisions for suspension of rent in case of fire.

XL.

MORTGAGE by a small TRADER of a LEASEHOLD HOUSE, with the GOODWILL (c) and TAKINGS of his BUSINESS (d) to the trustees of a LOAN SOCIETY, the MONEY to be REPAYED by WEEKLY INSTALMENTS. VARIATIONS where the CASHIER of the MORTGAGOR is appointed RECEIVER.

Parties. *PARTIES*, A., mtgor (hrinar called the borrr, is defined as in *Prec. IV.*, p. 87), 1; B., C., & D., the trees of the — Socy (hrinar called the mtgees, which expression shl include the trees

Mortgages of goodwill.

(c) Although "goodwill" may not be property within the L. P. Act, 1925, the sale of the house under the statutory power, and consequently under the express power in the text framed by reference to the statutory power, would necessarily carry such part of the goodwill as attaches to the house: *Chissum v. Dewes*, 5 Russ. 29; *Pile v. Pile*, 3 Ch. D. 36; but not in a case where the goodwill depends upon the personal skill of the owner: *Cooper v. Met. Board of Works*, 25 Ch. D. 472; *Baglioni v. Cavalli*, 49 W. R. 236. If material, a covenant may be inserted by the mortgagor "that he will not & that no wife or widow of his will within — yrs after foreclosure or sale by the mtgees of the leasehd premes hby mtged, either alone or jointly, &c.," *continue covt not to carry on trade*, Vol. I., sub-tit. Conveyances on Sale, and see *ib.* p. 39. As to the right of the vendor after the sale to solicit his former customers, see Vol. I., p. 419, note, and the cases there referred to. As to the right of a mortgagee to use the trade name, see *Beazley v. Soares*, 22 Ch. D. 660.

Future takings and book debts.

(d) The Bankruptcy Act, 1914, s. 43 (2) makes a general assignment of book debts by way of security void as against a trustee in bankruptcy unless registered under the Bills of Sale Act, 1878. But the proviso contained in sub-section (1) of the same section creates an exception in the case of book debts due at the date of the assignment from specified debtors, and of debts due under specified contracts.

An assignment of future book debts is sufficiently defined, and passes the equitable interest in book debts incurred after the assignment, and, if not limited to book debts in any particular business, will be effectual as to book debts whether in the business carried on by the mortgagor at the time of the assignment, or in any other business: *Tailby v. Official Receiver*, 13 App. Cas. 523, and see *Re Lind*, [1915] 2 Ch. 345.

As to what is included in book debts, see Vol. I., p. 422, note.

Contracts for personal service.

Remuneration payable under a contract of personal service involving a certain amount of technical skill which is received after the contractor's bankruptcy does not pass to the trustee, and if the contract has been mortgaged will accrue to the mortgagee: *Re Collins*, [1925] Ch. 556.

Limitation of freedom of commercial action.

The law will not allow a mortgagor as part of the security for a loan to enter into covenants with the mortgagee which deprive him of all freedom of commercial action: *Horwood v. Millar's Timber, &c., Co.*, [1917] 1 K. B. 305; cf. *Davies v. Davies*, 36 Ch. D. 354, at p. 393.

or tree for the time being of the sd Socy & their assns), 2 ; [E., *recer* (hrinar called the *recer*), 3], suppl to the *lease*, see p. 87, note (b) ; in conson, &c., *continue conson & receipt clause*, p. 14, f. 1, with variation in note (b), WITNESSETH as follows :—

(1) The borr hby covts with the mtgees to pay to them within the term of — weeks the sum of £—, the *ppal & intt*, by equal weekly instalmts of £— each, the first of such instalmts to be pd on the — day of —, & the last of such instalmts to be pd on the — day of —. AND FURTHER *continue as in note (b) on p. 22.*

Wit-
nesseth.

Covenant
for pay-
ment by
weekly
instal-
ments.

2. The borr as *benefl owner* hby demises (e) unto the mtgees, ALL & SINGR the ppty & premes comprised in & demised by the *ppal deed* ; *habendum*, p. 23, f. 2.

Demise.

3. The borr as *benefl owner* hby assns unto the mtgees ALL the goodwill & connection of the business of —, now carried on by the borr in the sd messe & premes hrinbfe demised AND ALSO all moys to be received by or to become owing to him the borr in respt of the sd business, To HOLD UNTO the mtgees, subjt to the proviso for redmon hrinar contd :

Assign-
ment of
goodwill.

Haben-
dum.

4. PROVD ALWAYS that if the borr shl pay to the mtgees the sum of £— the *ppal & intt* by the instalmts, at the times, & in mner hrinbfe mentd, psuant to the covt in that behalf hrinbfe contd, then & in such case the term hby created shl absolutely cease & determine & merge in the reversion immedly expectant thron & the mtgees shl at the request & cost of the borr re-assn to the borr the premes hrinbfe assned.

Proviso
for re-
demp-
tion.

5. The borr hby covts with the mtgees, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5, the *insce to extend to stock-in-trade*. PROVD ALWAYS that all repairs made to the mtged premes & any insce agst loss or damage by fire effected & maintained in psuance of the covts contd in the *ppal deed* shl on production, &c., *continue second proviso in note (b) on p. 42, down to the words "hrinbfe contd."* PROVD ALSO that all moys weh may be received in respt of any such insce of the sd stock-in-trade shl be applied in or towards the paymt in advce of the sd weekly instalmts.

Covenant
to repair
and
insure.

(e) Or, "hby charges by way of legal mtge, ALL &c. with the paymt to the mtgees of the *ppal moy intt* & other moy hby covtd to be pd by the borr," omitting the proviso for redemption in respect of the leasehold property.

- (ii) *Covenant to carry on business, &c.*, p. 47, f. 13.
- Power of sale. (iii) The mtgees may at any time or times after the execution of this deed sell, &c., *continue*, p. 57, f. 2, *with variation excludg* s. 103 of L. P. Act, 1925. *PROVD ALWAYS* that the mtgees shl not exercise the power of sale hby conferred unless & until, &c., *add events in wch power of sale shl be exercisable*, p. 58, f. 7, *includg sub-clauses* (i), (v), (vi) & (xi).
- (iv) *Charge of mtgees' expenses with intt*, p. 74, f. 11.
- Appoint- ment of receiver. 5. *Appointment of recer*, p. 82, f. 2, *saying* "of the rents, profits, & income of the mtged premes, & of all moys becoming due to the borr in respt of his sd business from the pson liable to pay the same." *PROVD ALWAYS* that the sd E. shl, out of the moys received by him in each week, in addition to the paymts authorised by the statute in that behalf, pay the instalmt of the moys hby seed wch is payable at the end of that week, & all other moys for the time being owing under this secy.
- IN WITNESS, &c. (f).

XLI.

MORTGAGE of SHARE in a PARTNERSHIP BUSINESS (a)
to a FIRM(x) of SOLICITORS to secure COSTS and
ADVANCES. VARIATION where the SECURITY extends
to FUTURE COSTS (b).

Parties. *PARTIES*, A., *mtgor* (hrinar called the borr), 1; B. & C., *solors*
in ptnp carrying on business in co-ptnp togr as solors at —

(f) If only part of the premises demised by the lease are mortgaged, add clause 5 (vii) of Prec. IV., p. 89.

Mortgage of share in partnership. (a) A share in a partnership is a *chose in action*, hence a mortgage thereof is not affected by the reputed ownership clause in the Bankruptcy Act or the Bills of Sale Acts: *Re Bainbridge*, 8 Ch. D. 218. As to the mode of realising a security of this nature, see *Whetham v. Davey*, 30 Ch. D. 574; and as to the effect of a partner mortgaging his share, see *Lindley*, 8th ed., 423.

Limited partner-ship. A limited partner may, with the consent of the general partners, assign his share in the partnership, in which case the assignee will become a limited partner; see the L. P. Act, 1907, s. 6 (5) (b). Sub-s. (5) (c) appears to have reference only to charges *in invitum*.

(x) As to contracts by a firm, see Vol. I., p. 15.

Mortgage by client. (b) See *ante*, p. 72, note (a). A solicitor may obtain a mortgage from his client for what is justly due to him: *Johnson v. Fesenmeyer*, 3 De

under the firm name of B. & Co., (hereinafter called the mortgagees, which expression shall include the survivor of the said B. & Co. their & his assigns), 2. *Recite properly articles of mortgagee's firm, showing the term of the property, & the provisions as to capital & interest thereon & profits*; AND WHEREAS the borrower is indebted to the mortgagees in the sum of £— for costs in respect of business done for & professional services rendered to him by the mortgagees: AND WHEREAS the borrower has

Recitals.
Mortgagor indebted for costs.
Agreement for loan.

G. & J. 13; *Pearson v. Benson*, 28 Beav. 598; and under the Attorneys and Solicitors Act, 1870, s. 16, he may take a mortgage for securing future costs, but the intention that it should extend to such costs should be very explicitly declared; see *Field v. Hopkins*, 44 Ch. D. at p. 528. As a mortgage for securing costs is not an ordinary mortgage transaction, but an arrangement for giving the client time for payment of a debt presently payable, it has been held that it is not incumbent on the solicitor in drawing up the mortgage to explain to the client such an unusual provision in the deed as a power of sale without notice: *Pooley's Trustee v. Whetham*, 33 Ch. D. 111; though where a solicitor advances money to his client in the ordinary way this must be done unless the client has independent professional advice: *Cockburn v. Edwards*, 18 Ch. D. 449.

to solicitor.

Whether the solicitor by taking a mortgage for his costs abandons his lien depends on the intention, either expressed or to be gathered from the circumstances. If the mortgage is in any degree inconsistent with the retention of the lien, it is the solicitor's duty to give express notice to his client if he intends to retain the lien, otherwise it will be taken to be abandoned: *Re Taylor, Stileman & Underwood*, [1891] 1 Ch. 590; *Re Morris*, [1908] 1 K. B. 473. A clause preserving the lien should be inserted where so intended. The principles and extent of a solicitor's lien are discussed in *Ackerman v. Lockhart*, [1898] 2 Ch. 1; and see *Re Meter Cabs, Ltd.*, [1911] 2 Ch. 557. A solicitor has no lien on the fruits of a mere negotiation without litigation: *Meguerditchian v. Lightbound*, [1917] 2 K. B. 298.

Solicitor's lien.

As to a charging order for costs under the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, see *Re Born*, [1900] 2 Ch. 433; *Ridd v. Thorne*, [1902] 2 Ch. 344; and as to its discharge, see *Re Deakin*, [1900] 2 Q. B. 489. A charging order is not protected by s. 45 of the Bankruptcy Act, 1914: *Wild v. Southwood*, [1897] 1 Q. B. 317. The power to make an order under the Act is a discretionary power: *Greer v. Young*, 24 Ch. D. at p. 557, which will not be exercised to the prejudice of trustees in respect of costs, charges and expenses properly incurred: *Re Turner*, [1907] 2 Ch. 126. See the order set out, *ib.*, 539.

Charging order.

An order winding up a company does not affect the lien of its solicitor on documents of which he was in possession at the time of the winding-up: *Re Rapid Road Transit Co.*, [1909] 1 Ch. 96; but it prevents him from acquiring a lien on documents coming into his possession after the presentation of the winding-up petition: *Re Capital Fire Insce. Assn.*, 24 Ch. D. 408.

As to what provisions in a mortgage from a client to his solicitor are inadmissible as tainted with champerty, see *James v. Kerr*, 40 Ch. D. 449.

As to the efficacy of the mortgagor's receipt in a mortgage to his solicitor, see *ante*, p. 14, note (a).

requested the mtgees to lend him the further sum of £—— to enable him to bring an addonal capl of £—— into his sd ptnp business, wch the mtgees have agrd to do on havg the repaymt of the sd sum of £—— so owing to them as afsd, as well as the sd sum of £—— to be advanced by them to the borr (a), with intt secd to them in mnner hrinar appearg : NOW THIS DEED made in psuance of the sd agrmt, & in conson of the sum of £—— so owing to the mtgees as afsd, & of the sum of £—— now pd by the mtgees out of their ptnp moys to the borr (the rect whrof the borr hby acknowes), WITNESSETH as follows :—

Wit-
nesseth.

1. *Covenant for paymt of aggregate sum & intt, & intt after default (b)*, p. 15, f. 1, & p. 17, f. 2.

Assign-
ment of
share in
partner-
ship capi-
tal, &c.

2. The borr, as **benefl owner**, hby assns unto the mtgees ALL the este & intt of him the borr in the capl of the sd ptnp business of, &c., includg as well as the sd sum of £——, now standg to the credit of the borr in the books of the sd ptnp business as the sd sum of £—— so to be brought in by him as addonal capl as afsd : AND all such further moys as may from time to time hrafter be brought into the sd ptnp business by the borr, whether by accumulon of profits or orwise, AND all the intt due & to acerue due in respt of such capl, AND all the share & intt of him, the borr, in All & singr the debts, ppty, & effects of every descron, as well psnt as future, payable or belongg to the sd ptnp (c), To HOLD UNTO the mtgees subjt to

Variation
where
security
extends
to future
costs.

(a) Where the security extends to future costs (see *Wales v. Carr*, [1902] 1 Ch. 860 : *Re Foster*, [1920] 3 K. B. 306), add here : “AND ALSO of every sum of moy wch may become owing to the mtgees from the borr for business transacted by them.”

(b) Where the security extends to future costs, add at the end of the covenant to pay principal and interest : “AND ALSO on such —— day of —— or —— day of —— as shl happen next after the same shl be ascertained, either by agrmt or taxation, every sum of moy to become owing to the mtgees from the borr for business transacted by them, with intt thron in the meantime at the rate afsd from the time of the same being so ascertained.”

(c) As to the rights of mortgagees of shares in partnerships, see P. Act, 1890, s. 31 ; *Watts v. Driscoll*, [1901] 1 Ch. 294 ; *Re Garwood*, [1903] 1 Ch. 236 ; *Bonnin v. Neame*, [1910] 1 Ch. 732.

the proviso for redmon hrinar contd: *Proviso for redmon*, p. 26, f. 3, *on paymt of aggregate sum & intt (d)*.

3. The borr hby covts with the mtgees & with each of them, AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Proviso for reduction of intt on punctual paymt*, p. 29, f. 1, *omitting reference to power of sale*.

(ii) That the borr will at all times durg the continue of this secy give to the mtgees all such informon as to the business & assets of the sd ptnp firm of A. & Co. as they shl reasbly require, & as it shl be lawful for the borr to give, & also if all the ptnrs in the sd firm shl consent will allow them to inspect the ptnp books & to make copies of & extracts from the same (a).

Covenant to give information, &c.

(iii) The exon of this deed and the creation of the secy indt to be hby made shl not prejudice or affect any lien wch the mtgees now have or may hrafter have, or but for this deed would have, upon any papers or documts belongg to the borr, wch lien is hby expressly reserved to the mtgees.

Mort-gagee's lien to subsist.

IN WITNESS, &c. (b).

XLII.

MORTGAGE of RENEWED LEASE *by reference to and supplemental to a PRIOR MORTGAGE of the SURRENDERED LEASE (c)*.

PARTIES, A., mtgor (hrinar called the borr, *defining the borr* Parties.

(d) Where the security extends to future costs, the proviso for redemption will be as in f. 3 on p. 26, saying, instead of "shl be advanced, &c.," "shl become owing, pay to the mtgees or their assns every other sum wch may become owing to the mtgees from the borr for business transacted by them, with intt thrn," &c., as in the form, and adding the following proviso :—"PROVD THAT, notwithstanding the provons hrinbfe contd, future costs shl be deemed to become owing to the mtgees from the borr on the first day on wch the mtgees shl be able by law to take proceedings by action or orwise for the recovery of the same, & the intt thrn shl begin to accrue from that day."

(a) See the P. Act, 1890, s. 31, and *post*, p. 358, note (c).

(b) Notice of the mortgage should be given to the firm.

(c) As to the stamp on a substituted security, see the Stamp Act, 1891, Schedule, MORTGAGE, and the Revenue Act, 1903, s. 7, which is not retrospective: *Lord Suffield v. I. R. Commrs.*, [1908] 1 K. B. 865.

Recitals. *as in Prec. IV., p. 87), 1 ; B. & C., mtgees* (hrinar called the mtgees), 2 ; WHAS this deed is suppl to a mtge, dated, &c., & made, &c. (being a mtge by the borr to the mtgees of the premes comprised in a lease, dated, &c., & made, &c.) : AND WHAS by a deed bearg even date with & exted bfe this deed & endorsed on the sd lease & made betn, &c., the sd lease has been surrendered to the sd X., in whom the reversion of the premes comprised in the sd lease is now vested : AND WHAS by another deed also bearg even date with & exted bfe this deed, & made betn the sd X. of the one pt & the borr of the other pt, the messe or tenemt & premes comprised in the sd surrendered lease have been demised by the sd X. to the borr, for the term of — yrs from the — day of —, at the yrly rent of £—, & subjt to the lessees' covts & condons thrin contd : AND WHAS the mtgees concurred in the surr of the sd lease at the reqt of the borr, upon an agrmt that the renewed lease to be grted as afsd shd be demised to the mtgees by way of secy for the ppal moys owing to them under the sd mtge & the intt thron, in substitution for the sd surrendered lease in mner hrinar appearg : *State of mtge debt, p. 12, f. 11* : NOW THIS DEED made in conson of the mtgees havg at the reqt of the borr concurred in such surr as afsd, & of the premes, WITNESSETH that the borr as **benefl owner** hby demises (a) unto the mtgees, ALL & SINGR the sd messe or tenemt & premes comprised in or demised by the recited lease of even date herewith : To HOLD UNTO the mtgees for the sd term of — yrs grted by the sd lease of even date hwith less the last ten days throf, subjt to the like right of redmon on paymt of the ppal moys & intt owing on the secy of the sd mtge, & with the like [power of sale & other] provons for securg & obtaing paymt of the sd ppal moys & intt, & with the benefit of the like covts on the pt of the borr, & subjt to the like provons in all respts as are contd or implied in or conferred by the sd mtge concerng the premes comprised in the surrendered lease, to the intent that the sd lease of even date hwith of the sd premes may become in all respts substituted for the sd surrendered lease throf as a secy for the paymt of the sd sum of £— & intt. IN WITNESS, &c.

Sur-render. New lease. Agree-ment. Wit-nessesth. Demise. Parcels. Haben-dum to mort-gagees as substituted security.

(a) Or, "hby charges by way of legal mtge, ALL &c. with the paymt to the mtgees of the ppal moy intt & other moy hby secured."

XLIII.

MORTGAGE of CHARITY ESTATES pursuant to an ORDER of the CHARITY COMMISSIONERS to secure repayment of PRINCIPAL and INTEREST by equal ANNUAL INSTALMENTS extending over a given period. VARIATION for PRINCIPAL payable at a FUTURE DATE. POWER OF SALE EXCLUDED (a).

THIS LEGAL CHARGE made &c., *Trees of Charity* (hinar called the borrs, which expression shl include the trees or tree Recitals.

(a) All land vested in trustees on or for charitable, ecclesiastical, or public trusts or purposes is by s. 29 (1) of the S. L. Act, 1925, deemed to be settled land, and the trustees without being thereby constituted statutory owners have all the powers with reference to the land which are by that Act conferred on a tenant for life and on the trustees of a settlement. Land to which the Universities and College Estates Act, 1925, applies is not within the above-mentioned section. A conveyance, which by s. 117 (1) (v) of the S. L. Act, 1925 includes a mortgage, of land held on charitable trusts must state that the land is held on such trusts and a mortgagee is bound to see that any consents or orders requisite for authorising the transaction have been obtained. Subsection (2), s. 29, provides that the powers conferred by the Act shall be exercisable subject to such consents and orders, if any, being obtained as would have been necessary if the Act had not been passed, and the transaction were effected under an express power in the instrument creating the trust. When the land is vested in the Official Trustee of Charity Lands or in any other person having no powers of management the statutory powers are exercisable by the managing trustees or committee of management, and the Official Trustee or other non-managing trustees are relieved of responsibility for giving effect to their directions. The administrative jurisdiction of the Charity Commissioners, Board of Education, or other competent authority, is expressly saved by sub-s. (3). As to the administrative jurisdiction, see Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 21. Except in the case of charities exempted from the Act of 1853 (see Vol. I., sub-tit. Conveyances on Sale) the trustees of a charity cannot mortgage unless with the authority of Parliament, or of the Court, or in accordance with a scheme legally established (as to the meaning of which see *Re Mason's Orphanage, &c.*, [1896] 1 Ch. 596; *Att.-Gen. v. National Epileptic Hospital*, [1904] 2 Ch. 252), or with the approval of the Charity Commissioners; see Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 29. By s. 30 of the last-mentioned Act the Commissioners authorising a mortgage are to direct the trustees to discharge the principal debt or any part thereof within a period of 30 years by instalments or by creating a sinking fund. A mortgage so authorised is invariably directed to be made without power of sale.

Effect of the S. L. Act, 1925 on charitable and public trusts.

Power of charity trustees to mortgage.

This precedent is believed to be in accordance with the requirements of the Charity Commissioners as gathered from the forms of order for the mortgage of charity lands in common use. The terms of the order must in each case be referred to for the purpose of ascertaining the extent to which

Agree-
ment for
loan.

for the time being of the Charity hrinar mentd), 1; B., *mtgee*, (hrinar called the *mtgee*), 2. *Recite title of mtgors* "as trees of the Charity known as —, & hrinar called the Charity": AND WHAS by an order of the Charity Commrs (b), dated the — day of —, the borrs were authorised to borrow & raise a sum not exceedg £— at a rate of intt not exceedg £— p.c. p.a., upon the secy of a *mtge* expressly excludg all power of sale of the whole or any pt of the ppty of the Charity [other than the school bldgs and the site throf, *or as the case may be*] (c), & provdg for the repaymt of the ppal sum so borrowed & raised with intt thron as afsd out of the income of the Charity by means of — eql yrly instalmts of ppal & intt: AND WHAS under the authority of the sd order the borrs have applied to the *mtgee* for the loan of £— for the pposes mentd in the sd order, & the *mtgee* has agrd,

it is possible to bind the funds of the Charity, and it is thought that any stipulations in the mortgage deed purporting to bind those funds to any greater extent than is expressly or impliedly authorised by the order, or purporting to bind the successors of the existing trustees of the Charity, must necessarily be inoperative.

(b) Any order of the Charity Commissioners duly sealed, and every certified copy of any such order, is receivable in evidence without further proof; see Charitable Trusts Act, 1853, s. 8; the Act of 1855, s. 5, and cf. *Baker v. Cave*, 1 H. & N. 674.

Variation
where
provision
is to be
made for
repay-
ment by
means of
sinking
fund.

(c) Where the order directs repayment at a future date and provision to be made by means of a sinking fund, substitute for the remainder of this recital; "AND by the same order it was provd that the ppal sum so borrowed & raised shd be repaid within the period of — years from the date throf, & that for that ppose the borrs shd out of the income of the Charity cause to be pd or remitted to the bankg acct of the Official Trees of Charitable Funds at the Bk of England on or bfe the — day of —, in the yr —, & in each succeedg yr during the sd period of — yrs, until the sd ppal sum so raised shd be fully repaid, a yrly sum of not less than £—, to be invested by such Official Trees in the pchase of $2\frac{1}{2}$ p.c. Consold Stk as thrin mentd, AND that the investmts so made shd be held by the Official Trees in trust for the Charity, AND by the same order it was provd that when & so soon [so often] as the sd investmts shd be of sufft value for the ppose [to produce on sale throf a sum of £— cash], the same shd [might at the reqt of the borrs] be sold, & the proceeds remitted to the borrs to be applied by them in repaymt [reduction] of the sd ppal sum so raised as afsd."

continue agrmt for loan, p. 10, f. 1. NOW THIS DEED made in psuance of the sd agrmt &, *conson & receipt clause*, p. 14, f. 1, & in obedience to the sd order, WITNESSETH as follows: the borrs as trees hby charge by way of legal mtge, *Parcels*, Vol. I., pp. 480 *et seq.*; with the paymt to the mtgee of the ppal moy intt & other moy hby secured the Official Trees of Charitable Funds.

Wit-
nesseth.
Charge.

AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

1. THE SD sum of £——, with intt thron at the rate of £—— p.c. p.a., shl be repaid (*d*) out of the income of the Charity within —— yrs from the date hrof by —— eql yrly instalmts of ppal & intt in the proportions mentd in the table set out in the schdle hto of £—— each on the —— day of —— in every yr, the first of such instalmts to be pd on the —— day of ——, & the last of such instalmts to be pd on the —— day of ——.

Repay-
ment of
loan.

2. THE BORRS shl during the continue of this secy insure & keep insured, *continue* p. 43, f. 5.

Insur-
ance.

3. No PSON or psons shl during the continue of this secy be regrd under the L. R. Act, 1925, as proptor or proptors of the

Registra-
tion.

(*d*) Whether the mortgage money is directed to be repaid by instalments or in a lump sum at a future date, it seems clear that, in the absence of express direction contained in the order, no provision for earlier payment in case of any instalment or interest, as the case may be, being in arrear should be inserted, inasmuch as the trustees would have no fund to draw from to meet any such payment.

Where the order directs repayment at a future date and provision to be made by means of a sinking fund, substitute the following paragraphs:—

1. "The sd sum of £—— shl be repaid out of the proceeds of sale of the investmts to be made & held by the Official Trees on behalf of the Charity for that ppose, in psuance of the provons of the sd order, on the —— day of ——, [with liberty nevertheless for the borrs or the Official Trees on their behalf, out of the trust premes as & when the same shl be sufft for that ppose, to pay to the mtgee by instalmts of not less than £—— each, such sum or sums as they shl from time to time think fit in reduction of the sd ppal sum of £——.]"

2. "Intt at the rate of £—— p.c. p.a. computed from the date hrof shl be pd on the —— day of —— & the —— day of —— in every yr on the ppal moys for the time being owing on this secy, & until so pd shl be charged upon the mtged ppty."

ppty hby mtged or any pt throf, witht the consent in writg of the mtgee.

Exclu-
sion of
power of
sale.

4. THE MTGEE shl have no power of sale over the mtged premes, but this provon shl not restrict or prejudice any other right or remedy by statute or orwise given to the mtgee, or prevent the exercise of such other power, right, or remedy in any mner whtsr, or his right to take proceedings for & obtain foreclosure (a).

5. *Clause restricting mortgagor's statutory power of leasing, &c., p. 65, f. 2:*

Liability
of trus-
tees.

6. THE borrs shl in all respects, so far as the trust funds, investmts & income of the Charity from time to time applicable for that ppose shl extend & be in their hands or under their control, comply with the provons of the sd order & the condons & stipulons hrin contd ; but the borrs shl not be under any psonal liability for or in respt of the non-paymt of the sd ppal sum of £—— & intt, or any pt throf, except to the extent of the trust premes so applicable & in their hands or under their control (b), or for or in respt of the non-observee or non-pformce of any of the condons or stipulons hrin contd, AND neither the borrs nor any of them shl after ceasing to be trees or a tree of the Charity be or remain under any psonal liability whtsr in respt of any breach of the provons of the sd order, or of the condons & stipulons of these psnts subsequently committed.

IN WITNESS, &c.

The Schdle above referred to.

(a) The reservation of the right to obtain foreclosure will be nugatory where by statute the land can only be used for charitable purposes: consider *Hornsey U. D. C. v. Smith*, [1897] 1 Ch. 843.

(b) As this proviso does not destroy, but only limits, the trustees' personal liability it is valid: *Williams v. Hathaway*, 6 Ch. D. 544; *Re Robinson*, [1912] 1 Ch. at p. 728.

XLIV.

MORTGAGE *under SEAL of BONDS and SHARES of COMPANIES incorporated under SPECIAL ACTS and LIMITED COMPANIES, some of the SHARES being fully and others partially PAID-UP, BEARER BONDS and SCRIP of a FOREIGN GOVERNMENT LOAN and of an ENGLISH COMPANY, for securing PAST and FUTURE TRADE DEBTS.*

PARTIES, as in Prec. I., p. 83, but omitting the definition : Recital of
 WHAS the borrr is indebted to the mtgee in sevl sums of moy, debt and
 amtg to upwards of £—— for goods sold, moys advanced, & deposit of
 orwse, & in order to induce the mtgee to continue his deals shares,
 with the borrr & for the ppose of securg the paymt of all such &c.
 moys as are or shl at any time hrafter be due & owing from the
 borrr to the mtgee, with intt thron as hrinar mentd, the borrr
 has transferred the shares specified in the first schdle hto (c),
 to the mtgee, & has deposited with the mtgee the certfes, togr

(c) The shares in the first schedule are fully paid up ; those in the second schedule are liable to calls. Those in both schedules are transferable by deed or by writing with registration. The bearer bonds in the third schedule are negotiable instruments and are transferable without any formal document. The scrip in the fourth schedule is scrip of a foreign loan, and is a negotiable instrument liable to forfeiture on non-payment of the remaining instalments, and when fully paid up is exchangeable for a bond of the government ; see *Goodwin v. Robarts*, 1 App. Cas. 476 ; and the scrip in the fifth schedule is scrip of a company in which the scrip-holder does not acquire the rights of a debenture holder until his scrip has been exchanged for debenture or debenture stock certificates and his name has been inserted in the company's register of debenture or debenture stock holders. Descrip-
 tion of
 shares
 mort-
 gaged.

An equitable mortgage of shares may be effected by an instrument charging them with the payment of the mortgage debt and interest and containing other mortgage provisions. Provision must be made for conferring on the mortgagee, or enabling him to obtain, the legal ownership of the shares. As to the importance of obtaining the legal ownership, see *Rainford v. Keith, &c., Co., Ltd.*, [1905] 1 Ch. 296 ; reversed, [1905] 2 Ch. 147 ; *Mackereth v. Wigan Coal, &c., Co.*, [1916] 2 Ch. 293. Generally speaking, where the shares are fully paid up, actual transfers to the mortgagee completed by registration are made. This course is undesirable where the shares are not fully paid up as the registered owner may become liable for calls. In this case it is the practice to hand to the mortgagee the share certificates, together with transfers in blank. Equitable
 mort-
 gages of
 shares.

with transfers in blank, of the shares specified in the second schedule, & has deposited with the mortgagee the bearer bonds

Transfers in blank. The law as to transfers in blank is discussed in Buckley, 9th ed. 577, where the cases are collected.

Where the transfer of a share must be made by deed, a transfer in blank made for value confers on a person whose name is subsequently inserted as transferee a right, subject to prior equities, to call for a legal transfer, but it is void at law as a deed; see *Norton on Deeds*, 31, and *Elph., Intro.*, 7th ed., 258. It is conceived that ss. 56 (1), 71 (1) of the L. P. Act, 1925, have not altered the old common law rule that the person to take a benefit under a deed must be ascertained at the time of execution. To obviate this inconvenience it is the practice to give to the mortgagee a power of attorney authorising him to fill up the blank and to deliver the transfer in the name of the mortgagor. On the other hand, where the shares can be transferred without deed the transfer in blank made for value confers on the person whose name is subsequently inserted as transferee a legal right to be registered.

Where a transfer in blank is made as a security the mortgagee may insert his own name as transferee or he may transfer his security and insert the name of the person to whom he transfers the security as the transferee of the shares. Any person aggrieved by an alleged improper entry on the register, or the Company, or any member of it, may apply to the Court under s. 32 of the Companies (Consolidation) Act, 1908, for a rectification of the register: *Re Indo-China Steam Navigation Co.*, [1917] 2 Ch. 100. Where the articles confer on the directors a power to refuse to register transfers which in their opinion are contrary to the interests of the Company, they cannot refuse a transfer simply because they consider the transferee a mere nominee of the transferor, or because registration of the transfer would multiply the number of shareholders supporting a policy of which the directors disapprove: *Re Bede Steam Shipping Co.*, [1917] 1 Ch. 123. The same rule is applicable to a private Company: *Re Copal Varnish Co.*, [1917] 2 Ch. 349.

Right to vote in respect of mortgaged shares. So long as the mortgagor's name remains on the register as between him and the Company he is entitled to vote, though as between him and the mortgagee he must vote as the mortgagee directs: *Wise v. Landsell*, [1921] 1 Ch. 420. The Court will enforce the right of the mortgagee by mandatory injunction. *Puddephatt v. Leith*, [1916] 2 Ch. 200, and see *Siemens Bros. & Co. v. Burns*, [1918] 2 Ch. 324.

Bankruptcy Act, 1914, as to shares in company. Shares in an incorporated Company transferable only by deed are "things in action" within the meaning of the Bankruptcy Act, 1914, s. 38, subs. 2 (c); *Colonial Bank v. Whinney*, 11 App. Cas. 426. As to shares not being "in the possession, order, or disposition of a bankrupt in his trade or business" within the meaning of that section, see *ib.*, and *Re Jenkinson*, 15 Q. B. D. 441.

A mortgage of shares under hand only, or by mere deposit of the certificates, implies a power of sale: see *Harrold v. Plenty*, [1901] 2 Ch. 314; *Deverges v. Sandeman Clark & Co.*, [1902] 1 Ch. 579; *Stubbs v. Slater*, [1910] 1 Ch. 632.

Notice to Company. Notice to a Company of an equitable assignment of shares confers no priority as between successive equitable mortgages: *Société Générale de Paris v. Walker*, 11 App. Cas. 20; but, where such notice is given, the

specified in the third schdle hto & the scrip certfes specified in the fourth & fifth schdles hto resply & has agrd to execute this deed: NOW THIS DEED made in conson of the borr being indebted to the mtgee as afsd, & of the recited agrmt & the premes, WITNESSETH as follows :

Wit-
nesseth.
Covenant
for pay-
ment.

1. *Covenant for paymt on demand*, p. 20, f. 10, of "all & every the sum or sums of moy weh are now or shl at any time hrafter be owing from the borr to the mtgee or his assns in respt of goods sold, advances made, or on any other acct whatsr, togr with intt for the same resply at the rate of £—— p.c. p.a. from the time or respective times of the same having become due.

2. The borr, as **benefl owner**, hby charges ALL the shares, bearer bonds & scrip certfes, specified in the schdles hto, with the repaymt to the mtgee of the moys hrinbfe covenanted to be pd by the borr to the mtgee; *Proviso for redmon*, p. 26, f. 4, on paymt "on demand" of "all & every the sum or sums of of moy weh are now or shl at any time hrafter be owing from the borr to the mtgee in respt of goods sold, advances made, or on any other acct whatsr, togr with intt for the same resply at the rate of £—— p.c. p.a. from the time or respective times of the same having become due.

Charge.

Proviso
for
redemp-
tion.

3. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) That he will, during the continue of this sey, duly & punctually pay all calls & instalmts (d) that may be made or become due in respt of any of the mtged premes & that in default of his so doing the mtgee may make such paymts, & all sums pd by him for that ppose shl be deemed to be pperly pd by him.

Covenant
to pay
calls.

(ii) The mtgee may as well bfe as after the sd transfers of the sd shares specified in the second schdle hto shl have been completed & regard, receive all dividends & bonuses

Power to
receive
divi-
dends,
&c. (e).

Company cannot obtain priority over the mortgagee in respect of any money becoming due to them by the shareholder after the date of the notice notwithstanding that the Articles of Association give the Company a lien on the shares for moneys becoming due to them from the holder: *Mackereth v. Wigan Coal, &c., Co.*, [1916] 2 Ch. 293, and see Buckley, 9th ed. 76.

(d) Once the shares are sold the purchaser will, so long as the mortgagor remains the registered holder, be bound to indemnify him against calls made after the sale: *Spencer v. Ashworth Partington & Co.*, [1925] 1 K. B. 589.

(e) See *ante*, p. 116, note (bb).

becoming due thron, & exchange the scrip certfes mentd in the fourth & fifth schdles hto for bonds or debentures or debenture stk for wch the same may resply be exchangeable.

(iii) *Power of sale by reference to statute*, p. 57, f. 2, "at any time or times after the exon of this deed," with variation excluding s. 103 of L. P. Act, 1925.

Power to
fill in
transfers.

(iv) The mtgee may insert his own name or the name of any pchaser under the power of sale hby conferred in all or any of the sd transfers in blank, & may in the name of the borrr sign, seal & deliver all or any of the sd transfers in blank, and may cause any such transfer to be regrd (f), & also may (for the ppose of carrying out a sale) deliver the sd bearer bonds & scrip certfes or any of them to any such pchaser.

Covenant
to permit
shares
to be
revested.

(v) That the borrr will if required by the mtgee, permit all or any of the shares specified in the second schdle hto to be revested in the borrr in such mner as the mtgee shl think fit.

Covenant
to in-
demnify.

(vi) That the borrr will indemnify the mtgee, his exs & ads against all costs & liabilities wch may be incurred or sustained in respt of any of the mtged premes (g).

(vii) *Charge of mtgee's expenses with intt*, p. 74, f. 11, omitting the words "on the respective days hrinbfe appointed for paymt of intt on the sd ppal sum of £——."

IN WITNESS, &c. (a).

Five Schedules.

(f) The mortgagor must not prevent or delay the registration of the transferee as owner of the shares: *Hooper v. Herts*, [1906] 1 Ch. 549, though as a general rule the obligation is on the latter to prepare the transfer: *Birkett v. Cowper-Coles*, 35 T. L. R. 298.

(g) As to the right to indemnity, see *Hardoon v. Belilios*, [1901] A. C. 118; *Matthews v. Ruggles-Brise*, [1911] 1 Ch. 194.

Stamp.

(a) The security in the text, being under seal (which is necessary on account of the power of attorney to execute deeds, see Vol. I., p. 202, note, though not otherwise), is chargeable with the full 2s. 6d. per cent. mortgage duty; but if it were under hand only, it would be chargeable only with a 6d. agreement stamp, as a mortgage of stock and marketable securities (as defined by the Stamp Act, 1891, s. 122), see *Alpe*, 16th ed. 201.

XLV.

AGREEMENT *under HAND preserving for the MORTGAGOR the right of voting in respect of MORTGAGED STOCKS and SHARES (b).*

PARTIES, A., *mtgor.* (hrinar called the *borr*), 1; B., *mtgee* (hrinar called the *mtgee*), 2; SUPPL to a *mtge* dated, &c., & made, &c., being a *mtge* by the sd A. to the sd B. of the [stocks &] shares set out in the schedule hto.

WHEREBY IT IS AGREED AS FOLLOWS :.

1. The *borr* may so long as the *pwr* of sale applicable to the sd *mtge* shl not have become exercisable & so long as the [stocks &] shares set out in the Schedule hto remain standing in his name in the registers of the respt Coys wch issued the same exercise for his own benefit, & at his own discreon the right of attendg all or any of the meetgs of the sd Coys in accordee with the arts of asson throf for the time being, & may vote or abstain from votg thrat at the like discreon, & witht consultg or being in any way answerable to the *mtgee* for the votes so given or withheld.

2. If before the sd *pwr* of sale shl have become exercisable the *mtgee* shl cause himself to be registered in the books of any of the sd Coys as holder of any of the sd [stocks or] shares the *mtgee* shl forward by registered post to the *mtgor* all notices received by him in respt of the sd [stocks &] shares so registered in his name, & shl at the direction & expense of the *mtgor* attend the meetgs convened by the sd notices & vote thereof as the *borr* in writg directs.

3. Immediately on the sd *pwr* of sale becomg exercisable the *borr* shl so long as any of the sd [stocks or] shares remain standg in his name in the registers of any of the sd Coys forward

(b) This Precedent is intended for use where a mortgagor desires to retain his right of voting during the continuance of the mortgage. When this right is not specifically preserved the mortgagor so long as his name is on the register must vote as the mortgagee directs, see *ante*, p. 196.

forward by registered post to the mtgee all notices received by him in respect of the sd [stocks or] shares, & shl at the directn & expense of the mtgee attend the meetgs convened by the sd notices & vote thrat as the mtgee in writg directs.

IN WITNESS, &c.

Schedule.

XLVI.

MORTGAGE of FREIGHT and EARNINGS of a SHIP, and POLICIES of INSURANCE thereon, to accompany a STATUTORY MORTGAGE (c).

Parties.

PARTIES, A., mtgor (hrinar called the borr), 1; B., mtgee (hrinar called the mtgee), 2: WHAS the borr is the regrd

Mortgages of ships.

(c) Mortgage of ships are now regulated by the Merchant Shipping Act, 1894, ss. 31—38. As to the rights and liabilities of mortgagees of ships, see *Black v. Williams*, [1895] 1 Ch. 408; *Barclay v. Poole*, [1907] 2 Ch. 284; 2 Dav. Prec., 4th ed., pt. 2, pp. 206 & 233; see also the Digest to the Law Reports, *sub-tit.* SHIP-MORTGAGE.

The mortgagee does not by the statutory mortgage obtain a right to the freight until he takes possession of the ship or gives notice requiring the freight to be paid to him: *Wilson v. Wilson*, L. R. 14 Eq. 32; *Keith v. Burrows*, 2 App. Cas. 636; *Essarts v. Whinney*, 88 L. T. 191. As to the meaning of "freight," see Goodeve, P. P., 5th ed., 119; Stroud, Jud. Dict., S.V. As to the effect of omitting to register a mortgage, see *Keith v. Burrows*, 2 App. Cas. 636; and as to the right to take possession, see *The Manor*, [1907] P. 339.

Under the Bills of Sale Act, 1878, s. 4, & the Act of 1882, s. 3, transfers, assignments, or mortgages of a ship or vessel (which includes a barge: *Gapp v. Bond*, 19 Q. B. D. 200; and comprises, in the case of a mortgage, articles necessary to the navigation of a ship or to the prosecution of the adventure which were on board at the date of the mortgage, and articles subsequently brought on board in substitution for them: *Coltman v. Chamberlain*, 25 Q. B. D. 328), or any share thereof, are not required to be registered as bills of sale. They are also exempt from stamp duty under the Stamp Act, 1891, Sched. GENERAL EXEMPTIONS FROM ALL STAMP DUTIES (2). The Inland Revenue Commissioners, however, claim *ad valorem* duty on a mortgage in the form in the text. As to fees in respect of mortgages of ships, see Vol. I., *sub-tit.* MISCELLANEOUS PRECEDENTS, Note.

owner of the British ship — of the port of — ; AND WHAS the sd ship is about to proceed on a voyage to — & back to the United Kingdom [under a charter party, dated, &c., & made, &c.]; AND WHAS the borr has, by a poly of insurce, dated the — day of —, & effected with Messrs. K. & Co., insured the sd ship, passage-moys, earnings & freight in the sum of £—; *Agrmt for loan*, p. 10, f. 1, saying, “at the rate of — p.c. p.a., seed by a staty mtge, & upon havg the repaymt of the sd ppal moys & intt further seed, & the repaymt of all the other moys, charges, & intt hrinar mentd, seed in mner hrinar appearg:” AND WHAS, by a staty mtge, bearg even date with this deed, under the hand & seal of the borr, & intd to be regrd at — afsd, the borr, in conson of the sum of £— this day lent to him by the mtgee, has covtd with the mtgee, *recite covt for paymt of £— & intt*, & for better securg the repaymt in mner afsd of the sd ppal sum & intt, the borr has thby mtged the sd ship to the mtgee [& in the sd mtge is contd a provo that the staty power of sale shl not be exercised until the sd — day of —]: NOW THIS DEED WITNESSETH, that in further psuance of the sd agrmt, & in conson of the premes, the borr, as benefl owner, hby assns unto the mtgee, ALL THE freight, passage-moys, & earnys of the sd ship, or any shares or share throf, on the now intd, or any future voyage: AND ALSO [the sd charter party, &] all future charter pties, contracts, & agrmts in relation to the sd ship, or the freight, passage-moys, or earnys throf: AND ALSO the sd poly of insurce, & all & every psnt or future poly or pols of insurce on the sd ship, or her apptmts, or any shares or share thrin, or on the freight, passage-moys, or earnys throf or any pt or pts throf, & all moys insured by or to become payable under the sd pols, or any of them, & the full benefit throf (a); To HOLD UNTO the mtgee, subjt to the proviso for redmon hrinar contd: PROVD ALWAYS, that if the borr shl on the — day of — next pay to the mtgee the sd

Recitals:
Title of mort-
gagor.

Intended
voyage.

Insur-
ance.

Agree-
ment for
loan.

Statutory
mort-
gage.

Wit-
nesseth.

Assign-
ment of
freight.

Charter
party.

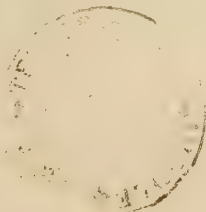
Policy.

Haben-
dum.

Proviso
for re-

As to the assignment of marine policies, see the Marine Insurance Act, 1906, ss. 50—54. Notice of the assignment is not necessary. As to the stamp on the policy, see Fin. Act, 1920, s. 41.

(a) Under this assignment, when the mortgage debt becomes payable, the mortgagee is entitled to the insurance money, and the mortgagor cannot require it to be applied in restoring the property: *Swan, &c., Co. v. Maritime, &c., Co.*, [1907] 1 K. B. 116.



demp-
tion.

ppal sum of £—— & intt intd to be seed by the sd staty mtge, & shl also on demand pay to the mtgee all the expses, premiums, commissions, charges, moys, & intt hrinar covtd to be pd by the borr to the mtgee, then & in such case the mtgee shl at any time thrafter, at the reqt & cost of the borr, reassn the sd premes hrinbfe assnd to the borr :

The borr hby covts with the mtgee AND IT IS HBY AGRD
AND DECLARED AS FOLLOWS :—

Covenant
by mort-
gagor
that
mort-
gagee
may col-
lect the
insurance
money.
Not to
vitate
policy.

1. That in the event of the sd ship being lost or sustaing or being liable to contribute to or pay for any loss, the mtgee may collect the amt insured in respt of the sd ship or her freight or earngs, or pd by the under-writers, for the benefit of whom it may concern.

To effect
new
policy if
present
policy
vitiated.

2. That neither the borr nor any pson to whom the sd ship [is or] may be chartered nor their respt servants will do or suffer anything whby the psnt or any future poly of insurce on the sd ship or the freight, passage-moys, or earngs throf may be vitiated or become void, or the mtgee may be prevented from receivg or recoverg the moys thby assured, or any pt throf : AND THAT if the sd poly or pols shl be or become vitiated or void the borr will immedly, at his own cost, do all things necy for effectg a new poly or pols, & keepg the same on foot & vestg the same in & in the posson of the mtgee in lieu of & in substiton for such poly or pols as may have become vitiated or void as afsd.

To insure.

3. That the borr will at all times, during the continue of this secy, keep the sd ship & the freight, passage-moys, & earngs throf insured with Messrs. K. & Co., or some other under-writers or insurce office or offices to be approved of by the mtgee in the sum of £—— at the least [with the usual collision clause, & includg war risks] : AND THAT every poly so effected, &c., *to be subject to secy, p. 37, saying, instead of "origl poly," "poly hby mtged :*" AND THAT the borr will durg the continue of this secy pay all such premiums & moys as may be payable in order to keep the sd ship, freight, passage-moys, & earngs so insured ; *Power to mtgee to pay premiums, p. 35.*

New
policy
to be
subject to
security.

To pay
pro-
miums.
That
mort-
gagor will
pay mort-
gagee's

4. That the borr will, during the continue of this secy, pay or allow to the mtgee, in addon to all discounts received by him on insurce or disbursemts, all usual & custy commissions & charges for business wch may be pformed by the mtgee or any firm in wch he may be a member on acct of the borr in relation

to the sd ship or any shares or share thrin, in the same mner as if he had not been a mtgee of the sd ship. business charges.

5. That the borr will from time to time in writing apprise the mtgee of all or any information wch he may receive concerning the sd ship immedly on the receipt throf. To give information.

6. The borr hby irrevocably appts the mtgee to be his atty in his name & on his behalf to demand, sue for, enforce paymt of, & receive & give effectual receipts & discharges for the freight, passage moys, & earnings hby mtged, AND *to take & defend legal proceedings*, Vol. I., p. 210, f. 15, *saying, instead of* "in wch I am, &c.," "relatg to or affectg the sd ship," AND *to settle accts, compromise, &c.*, Vol. I., p. 211, f. 16, *saying, instead of* "or any other matters, &c.," "or any claims or matters now subsistg or hereafter arising in relation to the sd ship," AND to appt & discharge the master, officers, & crew of the sd ship, & genlly to act in & about the premes as fully & effectually to all intents & pposes as if the mtgee had been the absolute owner of all the mtged premes, AND *to employ agents*, Vol. I., p. 211, f. 19, AND the borr, for himself, his exs, & ads, hby ratifies & confirms, & agrees to ratify & confirm whatsr the mtgee shl do or purport to do by virtue of this deed. Power of attorney.

7. The mtgee or any pson or psons authorised by him may at any time after the — day of —, witht any further consent of the borr, enter upon & take posson of the sd ship, whether at sea or in port, & whether abroad or at home, & may navigate the sd ship & also detain her at any port where she may be & also remove her from any port to any other port for sale. Power to take possession.

8. *Power of sale by reference to statute*, p. 57, f. 2, *with variation excluding s. 103 of L. P. Act, 1925; & adding* PROV'D ALWAYS that the mtgee shl not exercise the power of sale hby conferred nor the power of sale applicable to the sd staty mtge unless & until, &c., *continue events on wch power of sale is to be exercisable*, p. 58, f. 7. Power of sale.

9. The statutory power of sale applicable hto may be exercised concurrently with the power of sale applicable to the sd staty mtge to the intent that all or any of the premes hby mtged & the sd ship or any share or shares throf may be sold at one entire price. Exercise of power of sale.

10. All costs, charges & expses pperly incurred by the mtgee Charge of mort-

gagee's
expenses.

in respt of the sd ship, freight, or insurces on the ship, freight, passage-moys or earnings, or orwise in the exon of the trusts or powers of this deed, togr with intt thron as hrinar mentd, shl be charged on the sd ship & on all the ppty for the time being subjt to this scy, & all other moys pperly pd, &c., *continue* p. 74, f. 11, *the intt to be pd* "on the respt days appointed in the sd staty mtge for paymt of intt on the sd ppal sum of £——."

Mort-
gagee's
indem-
nity.

11. The mtgee shl not be answerable for any involuntary losses wch may happen in or about the exercise or exon of the powers of sale or any other powers or trusts arising under the Merchant Shipping Acts 1894 to 1925 or any Act amending or re-enacting the same, or under this deed.

IN WITNESS, &c.

XLVII.

AGREEMENT to accompany STATUTORY MORTGAGE of a
SHIP, between two FIRMS (x) of SHIPOWNERS.

Parties.

Recitals.

Statutory
mortgage.

Agree-
ment.

Power to
mort-
gagees
to take
posses-
sion.

AN AGRMT made, A., B. & C. carrying on business under the firm name of A. & Co. (hrinar called the borrs), 1, and D. & E. carrying, &c. (hrinar called the mtgees), 2. WHAS by a mtge in the staty form bearg even date hwith 64 64ths of the British ship —— of the port of —— have been transferred by the borrs to the mtgees by way of mtge to secure the genl balance of the acct current of the borrs with the mtgees: AND WHAS, for further securg the paymt of the sd genl balance of acct current, the pties hto have agrd to enter into this agrmt: NOW IT IS HBV AGRD & DECLARED AS FOLLOWS:

1. THE MTGEES may at any time at their discreon (if they shl deem it necy so to do for better scy, & although no moys may be immedly due or payable to them by the borrs) enter into & retain the posson of the sd ship, & employ the same in any trade or for any voyage or voyages either as a genl ship or on hire or charter, & demand & receive the freight & earnsg throf, & their rect shl be a good & valid discharge for the same.

2. So LONG as any moy shl remain due to the mtgees the sd ship shl not proceed on any voyage or voyages wwith the

(x) As to contracts by firms, see Vol. I., p. 15.

written consent of the mtgees, & (if they think fit to exercise this power) they shl have the nominon of the master of the sd ship, & the borrs undertake from time to time to remove any master of whom the mtgees shl not approve, & to appt any master nominated by the mtgees.

As to
voyages
and nomi-
nation of
master.

3. THE MTGEES undertake not to require paymt of the balance of their acct current, or to exercise the power wch is given by the Merchant Shippg Acts 1894 to 1925 or any Act amending or re-enacting the same to sell the sd ship, until after the — day of —, except in case of the bkptey of or suspension of paymt by the borrs, or of a receivg order being made against them, or their compoundg or arrangg with their creditors, or of the breach by them of any of the clauses hrin contd, & for the pposes of this clause the dishonour of any bill of exchange accepted by the borrs shl be deemed to be a suspension of paymt by them.

Money
not to be
called in
before
a day
named.

4. IF ANY of the events mentd in the last precedg clause shl happen, & the mtgees shl think fit to require paymt of the balance of their acct current, a demand of paymt shl be deemed to be sufftly made, if in writg addressed to the borrs & served on them psonally, or left for them at their last-known place of business in —.

As to de-
mand of
payment.

5. THE MTGEES may buy in at any auction & rescind any contract for sale witht being responsible for any loss occasioned thereby.

Mort-
gagees
may buy
in at sale.

6. THE BORRS will at all times durg the continue of this seey insure & keep insured the sd ship & her freight [with the usual collision clause, & includg war risks] in the sum of £—— at the least, with such insce offices or underwriters as the mtgees shl require, & will from time to time deliver the origl stamped pols duly endorsed to the mtgees ; & in case of default either in insurg or keepg insured, or in deliverg the stamped pols duly endorsed as fsd, the mtgees may insure & keep insured the sd ship & her freight, or either ship or freight, in such amts as they shl think pper, & in case of the loss of, or damage to, the sd ship or freight, may recover & receive all insce moys, & give good & valid discharges for the same, & may compromise claims or refer the same to arbitron as they in their discrion think pper.

Mort-
gagors to
insure

7. ALL BILLS of exchange, whether current or overdue, bearg the name of the borrs & held by the mtgees, commission

As to
matters

to be included in account current.

as agrd upon, & all charges & expses wch the mtgees may incur or pay by reason of the dishonour or renewal of any bill of exchange, & also all expses incident to the insce or the takg & keepg posson or the sale of the sd ship, togr with intt at the rate from time to time agrd upon on all amts pd or advanced by the mtgees, shl form items in the acct current betn the pties, & be seed by the sd staty mtge & this deed, & the sd ship shl not be redeemed or redeemable until full paymt or satisfon of the same.

Mort-gagors to execute further assurances.

8. THE BORRS will, on reqt, execute & do any further assurce or act for more effectually assng & makg over the sd ship & her freight & earngs & all pols thron, to the mtgees, wch may be reasbly required.

9. This deed is intd to be, *continué proviso as to changes in either firm*, p. 73, f. 9.

IN WITNESS, &c.

XLVIII.

MORTGAGE *by a TRUSTEE in BANKRUPTCY so as to create a FLOATING CHARGE on the PROPERTY of the BANKRUPTS to a BANK advancing money for an INTERIM DIVIDEND (a).*

Parties. *PARTIES*, A., *mtgor*, "the tree of the ppty of B. & C., bkpts"
(hrinar called the tree wch expressn shl include the tree for the
Recitals. time being of the sd ppty), 1 : The — Bank (hrinar called the

(a) See the Bankruptcy Act, 1914, ss. 55, 56. This deed is a mortgage of part of the estate of the bankrupts, and consequently is exempt from stamp duty except in respect of fees under the Act : Bankruptcy Act, 1914, s. 148.

As to the nature of a floating charge, see *Governments, &c., Co. v. Manila Rly. Co.*, [1897] A. C. 81; *Illingworth v. Houldsworth*, [1904] A. C. 355; *Evans v. Rival, &c., Ltd.*, [1910] 2 K. B. 979; *Nat. Prov. Bank v. United Electric Theatres*, [1916] 1 Ch. 132.

This mortgage must be registered as a land charge under the L. C. Act, 1925, s. 10 (1), Class C. (ii), so far as it affects the present freehold or leasehold property of the bankrupts, unless the title deeds are deposited with the Bank. It should be remembered that a general equitable charge, even if registered, is liable to be overreached by a sale by the estate owner : L. P. Act, 1925, s. 2 (2), (3), (4). As to the effect of a charge on property to be acquired in the future, see *ante*, p. 180, note (e).

bank), 2 : WHAS B. & C. (hrinar called the bkpts), tradg as B. & Co., were duly adjudicated bkpts on the — day of — : AND the tree was duly apptd & on the — day of — (b) became the tree of the ppty of the bkpts : AND WHAS by a resolon duly passed by the committee of inspecton in the sd bkcy on the — day of —, the tree was permitted to borrow from the bank such sums of moy as are hrinar mentd upon the terms hrinar appearg : AND WHAS the bank at the reqt of the tree made with such permission as afsd have agrd to lend to him such sums of moy as are hrinar mentd upon havg, *continue agrmt for loan*, p. 10, f. 1 ; NOW THIS DEED WITNESSETH that in psuance of the sd resolution & agrmt, & in conson of the premes it is hby agrd as follows :—

Agree-
ment for
loan.
Wit-
nesseth.

1. SUBJT to the necy authorison by the Board of Trade being obtained psuant to s. 89 of the Bkcy Act, 1914, the tree shl as soon as possible after the signg of this deed open with the bank a bankg acct in the name of the bkpts' este, and the bank shl as & when so required by the tree place to the credit of the sd acct such sums as the tree shl in writg certify to be necy & sufft to enable him, with any moys weh for the time being may be in his hands as such tree, to provide for paymt of the priority debts, the costs of administron, & for an immediate distribon amongst the unsecured joint creditors of the bkpts of a sum eql to — in the pound on the amts of their unsecd proveable debts.

Banker
to open
account
and ad-
vance
moneys.

2. ALL sums payable to the tree by the bank under this deed shl be placed to the credit of the sd acct, & all sums weh, in the ordy course of the administron of the joint este of the bkpts, wd be pd by the tree to the credit of the acct of the sd este in the bkcy estes acct, shl be pd by the tree into the sd bankg acct.

Moneys
to be paid
into ac-
count.

3. ALL moys standg to the credit of the sd bankg acct or orwise received by the tree in the ordinary course of administron of the sd joint este, shl be applied by the tree, subjt to any special orders of the Ct weh may be made in relation to any such sums of moy, first in paymt of the priority debts & the costs of administron, & in distributg amongst the unsecured

Applica-
tion of
moneys
so paid.

(b) *I.e.*, the date of the certificate of the Board of Trade: Bankruptcy Act, 1914, s. 19 (4).

joint creditors of the bkpts a sum eql to — in the pound on the amts of their unseed proveable debts, & next in repaymt to the bank of the sums so advanced by them with intt thron, as from the dates of the same being advanced at the rate followg, that is to say, so long & so often as the bank rate of intt shl not be less than £2 p.c. p.a., at the rate of £1 p.c. p.a. over such bank rate, but so long & so often as the bank rate of intt shl be less than £2 p.c. p.a., at the rate of £3 p.c. p.a.

Charge.

4. As secy for the repaymt of all sums of moy to be advanced by the bank under this agrmt & intt thron, & the pper costs, charges, & expses of the bank in respt of such advces, the tree as tree, hby charges all the joint ppty of the bkpts, wch, under the order of adjudicon, has become or may hrafter become, vested in the tree (except so much throf as consists of psonal chattels to wch the Bills of Sale Acts 1878 & 1882 apply), but subjt to all the costs & expses of the collecton & realison throf, with the repaymt to the bank of all ppal sums wch they shl advance under this deed, togr with intt at the rates afsd, & the pper costs, charges, & expses of the bank as mtgees, & agrees that in the event of the bank becoming entitled to enforce the charge hby created, but not bfe that time, he the tree will, as & when required by the bank, execute to the bank or as they shl direct, all such assnmnts & instrumts with all neey powers of atty & powers of sale, as havg regard to the nature of the ppty hby made a secy for repaymt of such advances, intt, costs, charges, & expses shl be neey to give the bank a legal title to such ppty or any pt throf, or if the intt of the tree in such ppty or any pt throf shl be equitable only, to vest such equitable intt in the bank as mtgees throf.

Charge to be a floating security.

5. THE charge hby created shl constitute a floatg secy on the assets of the sd joint este, & so long as the tree shl duly pay into the sd bankg acct all sums received by him wch under this deed shl be payable into such acct, & shl duly make all the paymts required by this deed, to be made by him as such tree as afsd, & render such accts as to his rects & paymts in the matters afsd as the bank shl reasbly require, & give the informon hrinar upon him by this deed, the bank shl not before the — day of — hinder the tree in the managemt & administron of the ppty of the bkpts & the distribon throf amongst their creditors psuant to the Bkey Acts, & so long as the tree shl make no default in

makg such paymts, renderg such accts, givg such informon, & pformg such obligons, he shl be permitted to continue in uncontrolled posson of the sd joint este until the sd — day of —, & this charge shl not be enforceable against the sd joint este bfe the sd — day of —, unless & until such default as afsd shl be made by the tree: **PROVD THAT** the tree shl not be at liberty to create any mtge or charge upon any of the ppty included in this deed in priority to the charge hby created.

6. **NOTHING** hrin contd shl render the tree psonally liable to repay to the bank the sd advance & intt or any pt throf or any of the sums wch under this deed are to be pd to the bank, & the bank shl for the repaymt of the sd advance, intt, & sums of moy have recourse only to the sd joint este.

Trustee not to be personally liable.

7. **THE** obligons imposed on the tree under this deed are psonally bindg on him only so far as the pformce throf is consistent with the provons of & obligons imposed on the tree by the Bkey Acts & Rules.

Obligations imposed to be consistent with Bankruptcy Acts and Rules.

8. **THE** tree hbycovts with the bank to keep the bank informed of all the proceedings in the bkey, & in parlar to keep them informed of all that shl take place in the realison of the assets & of any proposed compromises or arrangemts with the debtors to the bkpts' este: **AND IT IS HBY provd** that the tree shl not carry into effect any such compromise or arrangemt to wch the bank shl object.

Covenant to keep bank informed, &c.

9. **THE** tree hby undertakes with the bank that durg the continue of this secy the annl premiums or other moys (if any) neey for keepg up the pols specified in the schdle hto wch form pt of the ppty hby charged, shl be duly pd out of the sd joint este as & when the same shl become due or within fourteen days thrafter, & that the rect for every such paymt shl forthwith be produced to the bank, all of wch paymts as & when made shl be deemed to be pt of the costs of administron payable by the tree hrunder, & that if any such paymt shl not be so made it shl be lawful for the bank to pay the same, & the moys so pd & the costs of makg such paymt togr with intt thron as hrinar mentd shal be charged on the ppty hby charged in favour of the bank, & all moys pd by the bank in respt throf shl on the same being pd be repaid on demand to them out of the sd joint este with intt thron from the time of paymt at the rate

Under-taking to keep up policies.

afsd, & until such demand shl be made & complied with, intt at the rate afsd on the moys so pd & for the time being remaing owing shl, in pt paymt of such intt, be pd out of the sd joint este to the bank.

10. In this deed the followg expressions shl, where the context so requires or admits, have the meangs hrinar assned to them :

Defini-
tions.

“ The priority debts ” means all sums wch under the Bankruptcy Act, 1914, s. 33, are payable in priority to all other debts of the bkpt ; “ costs of administron ” means all the paymts wch by Rule 117 of the Bkey Rules 1915, are required to be made out of the ppty of a debtor before the same is applied in paymt of debts or dividends, & any sums payable out of the joint este of the bkpts under any order of the Court or under the Bkey Act & Rules made thrunder.

IN WITNESS, &c.

The Schedule above referred to.

XLIX.

MEMORANDUM *under SEAL to accompany* DEPOSIT of DEEDS *with AGREEMENT to EXECUTE a formal* MORT- GAGE (a).

THIS MEMORANDUM OF CHARGE made by me, A.,
mtgor, WITNESSETH as follows :—

Deposit
of deeds.

1. The title deeds & documts relatg to the ppty situate in the parish of — in the county of —, known as the — este,

(a) This and the next eight Precedents are forms of equitable mortgages accompanying a deposit of deeds or other documents of title, or valuables. An equitable mortgage accompanied by a deposit of the title deeds is not a puisne mortgage and is not capable of registration as a land charge : L. C. Act, 1925, s. 10 (1), Class C. (i). Mere possession of the title deeds relating to the land affected confers priority on a mortgagee holding them as against all subsequent incumbrancers both legal and equitable : L. P. Act, 1925, ss. 13, 97, and see *ante*, p. 3. It is no longer necessary to register a memorandum of this description in a local deeds registry : L. P. Act, 1925, s. 11 (1) ; nor will any priority be gained thereby if it is registered. If the land charged subsequently becomes subject to a trust for sale a formal legal mortgage may be demanded from the estate owner and will have priority over the trust for sale : L. P. Act, 1925, s. 3 (2), and the equitable interest created by the charge cannot be overreached, even before a legal

a short description of wch is contd in the first schdle hto, & a list of wch deeds & documts is contd in the second schdle hto, have been deposited by me with B., *mtgee*, to secure to the sd B., the repaymt of the sum of £—— this day advanced by him to me with intt thron payable half-yrly at the rate of £—— p.c. p.a. until repaymt.

2. I hby, as *benefl owner*, charge the sd este & ppty [and all other (if any) the ppty belongg to me, or over wch I have any power of disposon, to wch the sd deeds & writgs or any of them relate] with the repaymt of the sd sum of £—— & intt. Charge.

3. I undertake that I will, when required, at my or their own cost, exte & deliver to the sd B., an effectual legal or formal mtge of the sd este & premes in such form & with such covts by me, & such powers of sale & other powers & provons as the sd Agree-
ment to
execute
mort-
gage(b).

mortgage has been executed, by a sale under a trust for sale created by the estate owner : s. 2 (3) (i).

This precedent is under seal as it contains a power of attorney to execute deeds (see Vol. I., p. 202, note), and also in order that the mortgagee may have the powers of sale and insuring and appointing receivers conferred by the L. P. Act, 1925 ; see *ante*, pp. 40, 51, and 77, notes ; but the latter object might (it is conceived) be attained by a clause expressly incorporating the statutory provisions. Form.

The provisions of s. 2 of the L. P. Act, 1925, only apply to purchasers, including mortgagees, of legal estates in land and it would appear that the rights of the *cestui que trust* prevail over the rights of an equitable mortgagee, without notice of the trust, where the security is created by deposit by a trustee in breach of trust : *Manningford v. Toleman*, 1 Coll. 670 ; see *Perham v. Kempster*, [1907] 1 Ch. 373 ; *Capell v. Winter*, [1907] 2 Ch. 376 ; and see *Burgis v. Constantine*, [1908] 2 K. B. at p. 501 ; *Hill v. Peters*, [1918] 2 Ch. 373. Rights of
cestui que
trust.

Where the land is not registered the deposittee should enter a caution against first registration ; L. R. Act, 1925, s. 53, and L. R. R. 64.

(b) As to the effect of an agreement to execute a legal mortgage, see *Maxfield v. Burton*, L. R. 17 Eq. 15 ; *Garnham v. Skipper*, 34 W. R. 135 ; *Farmer v. Pitt*, [1902] 1 Ch. 954 ; an "effectual" mortgage, *Spencer v. Clarke*, 9 Ch. D. 137. As to specific performance of an agreement to execute a mortgage, see *Stead v. Nelson*, 2 Beav. 245 ; *Hermann v. Hodges*, L. R. 16 Eq. 18. An English contract to execute a legal mortgage of land situate abroad is *inter partes* to be treated as an English mortgage subject to the rights and equities incident thereto : *British S. Africa Co. v. De Beers Consolidated Mines*, [1910] 2 Ch. 502 (reversed on another point, [1912] A. C. 52) ; the rule is the same where by the local law the equitable charge contained in the contract is not sufficient to create a valid incumbrance, or where one of the parties to the contract dies before a legal mortgage is executed : *Re Smith*, [1916] 2 Ch. 206. As to agree-
ment to
execute
legal
mort-
gage.

As to the stamp on the subsequent legal mortgage, see *Alpe*, 16th ed., 191.

B. may require for further securg the payment of the sd ppal moys & intt.

Power of attorney to convey legal estate on a sale (d).

4. I hby irrevocably appt the sd B. to be my atty (c) for me & in my name & on my behalf, & as my act & deed or orwise, to sign, seal, & deliver & orwise perfect any such legal or formal mtge as afsd or (witht executg any such mtge) any deed, assure, or act wch may be required or may be deemed pper on any sale by him of the sd ppty & premes, or any pt throf, under the power of sale applicable hto in order to vest in the pchaser or pchasers the legal este & all other my este & intt in the sd premes, with power to appoint a substitute or substitutes for the pposes afsd, or any of them (a).

Declara-
tion of
trust.

5. I declare that I shl henceforth hold the ppty hby charged In trust to convey the same as the sd B. shl from time to time direct, subject to such right of redmon (if any), as may subst by virtue of this deed : And I hby authorise the sd B. by deed to appt a new tree or new trees of the sd ppty, & in parlar at any time or times to appt a new tree or new trees throf in the place of myself, or any tree or trees appted under this power as if I were dead (b).

Power to
appoint
new
trustees.

As to
inserting
power of
attorney.

(c) This power should be inserted, since an equitable mortgagee by deed who sells under the statutory power of sale cannot convey the legal estate vested in the mortgagor : *Re Hodson*, 35 Ch. D. 668. The power is made irrevocable by the L. P. Act, 1925, s. 126, and would have been so even before the Act, see *Abbott v. Stratten*, 3 J. & Lat. 603 ; as to the effect of the Act where the property has been dealt with or the mortgagor has died, see Vol. I., p. 203, note.

Where an order for sale has been made by the Court under an equitable mortgage of land not secured of a legal term of years absolute or charge by way of legal mortgage, the Court may, in favour of a purchaser, make a vesting order conveying, or may appoint a person to convey, the land, or may create and vest in the mortgagee a legal term of years absolute to enable him to carry out the sale, but in each case without prejudice to the rights of any prior incumbrancer unless he consents to the sale : L. P. Act, 1925, s. 90 (1). By sub-s. (2) of the same section this power applies to equitable mortgages made or arising before or after the 31st December, 1925, but not to mortgages overreached by the powers conferred by the Act or otherwise.

Regis-
tered
land.

If land certificates are included among the documents deposited, notice of the deposit should be given under L. R. R. 239 *et seq.*, and a separate power of attorney to execute statutory transfers executed for filing under rule 82.

(d) A certified copy of this power of attorney together with such reference to the land charged as may be necessary to show what land the power affects must be filed at the Central Office : L. P. Act, 1925, s. 125 (1).

(a) See L. P. Act, 1925, s. 128 (1).

(b) Probably the insertion of this clause in an equitable mortgage under

[6. I hby undertake that during the continue of this seey no pson or psons shl be regrd under the L. R. Act, 1925, or any Act amending or re-enactg the same, as proptor or proptors of the ppty hby charged wtht the written consent of the sd B., & that the costs incurred by the sd B. of lodgg from time to time a caution against registron of the sd ppty shl be added to this seey.] Provision as to registra-tion.

[7. I hby undertake to pay all costs & expses incurred by the sd B. in respt of the premes, includg the cost of investigatg the title to the mtged premes & of stampg this deed & filing a certified copy of the power of attorney herein contained (c), & I agreed that all such costs & expses may be added to this seey (d).] Provision as to costs.

AS WITNESS my hand & seal this — day of —.

Two Schedules.

L.

MEMORANDUM *under SEAL to accompany the DEPOSIT of DEEDS, and AGREEMENT to EXECUTE a MORTGAGE, to secure an ACCOUNT CURRENT with BANKERS (e). VARIATIONS where the Deeds are deposited by a SURETY (f).*

THIS MEMORANDUM OF CHARGE made by me, A., *mtgor*, WITNESSETH as follows :—

1. The title deeds & writgs, a list of wch is contd in the schdle hto, relatg to the ppty situate, &c., known as, &c., have been Deposit of deeds.

hand only would render it liable to duty at the higher rate. A vesting declaration in a deed appointing a new trustee vests the legal estate in him, notwithstanding that a legal mortgage has been made to a person having notice of the deposit: *London & County Banking Co. v. Goddard*, [1897] 1 Ch. 642.

(c) An agreement by the mortgagor to pay the penalty on stamping after the proper time cannot be enforced: Stamp Act, 1891, s. 117; and this would be so without that enactment, see *Abbott v. Stratten*, 3 J. & Lat. 603.

(d) As to costs, see *National Provincial Bank of England v. Games*, 31 Ch. D. 582; *Wales v. Carr*, [1902] 1 Ch. 860; *Re Foster*, [1920] 3 K. B. 306. Costs.

(e) As to the stamp on a mortgage to secure future advances, see *ante*, p. 90. As to notice of subsequent incumbrances, see L. P. Act, 1925, s. 94 (2).

(f) See the notes to the last Precedent.

delivered & deposited by me to & with B., C., & D., carrying on business togr in coptnp as bankers, [or, "the — Bankg Co, Ltd,"] (hrinar called the Bank) for securg to them the paymt of all such sums of moy [not exceedg £—— (a)] as are now due, or shl from time to time or at any time be due to them from me [from K., of, &c., *the person whose debt is to be secd*], either on acct current, or for moy advanced or pd, or in respt of bills, drafts, or notes accepted, pd or discounted, intt, commission, or any other usual or lawful charges, or on any other acct whatsr, togr with all costs & expses weh may be incurred in respt of the premes.

Charge.

2. I hby, as **benefl owner**, charge all the sd ppty & premes [& all other ppty (if any) belongg to me, or over weh I have any power of disposon, to weh the sd deeds & writgs or any of them relate] with the paymt of all moys due or to become due as afsd.

3. *Agrmt as in last Prec. (b), to execute a legal mtge to, "the Bank," for secg, "the paymt on demand of all such moys as afsd, with intt for the same at the rate of £—— p.c. p.a."*

Power to
bankers
to grant
time to
principal
debtor
and to
drawers,
&c., of
bills.

4. I hby declare that the Bank may grt time or other [indulgee to or compound with] the sd K., or any other pson or psons liable on any bill, note, or other seey witht discharging or affectg this sey (c).

[5. **PROVD ALWAYS**, & it is expressly stipulated that this seey & my liability hrunder, shl be limited to the sum of £——.]

6. *Provision as to costs of "the Bank" as in last Prec.*

Interpre-
tation
clause.

7. In these psnts where the context so requires or admits, the expression "the Bank" shl include the psons or pson for the time being carrying on the sd bankg business. [Omit this clause if mtgees are a Co.]

AS WITNESS, &c.

The Schedule above referred to.

(a) The words in this bracket limit the charge: *Re Bowes*, 33 Ch. D. 586.

(b) See *ante*, p. 211, note (b).

(c) Add if desired power of attorney, declaration of trust and power to appoint new trustees, and covenant against registration, *ante*, p. 212, *mutatis mutandis*. Under the words "as my act & deed or orwise" a deed executed in pursuance of such a power by an officer appointed for that purpose by the board of directors by resolution or otherwise is in favour of a purchaser deemed to have been executed by a duly authorised officer: L. P. Act, 1925, s. 74 (4).

LI.

EQUITABLE MORTGAGE *under HAND only*, CHARGING
LAND (*d*).

To A. B., &c.

I, C. D., hby charge the ppty described in the schdle hto, [or, in the deeds mentd in the schdle hto], with the paymt to you on the — day of — next, of the sum of £—, now pd by you to me (the rect whrof I hby acknowe), with intt thron in the meantime at the rate of £— p.c. p.a. (*e*), [& also with the paymt to you on such — day of — or — day of — as shl happen next after the same resply shl be

(*d*) A charge unaccompanied by a deposit of title deeds is not a fixed security and is not recommended for general use. The charge can and should be registered as a general equitable charge under the L. C. Act, 1925, s. 10 (1), Class C. (iii), to gain priority as a land charge, but it is liable to be overreached on a sale by the estate owner after the creation by him of a trust for sale of the land charged: L. P. Act, 1925, s. 2 (2), (3) (v); L. C. Act, 1925, s. 22. The charge in this event attaches to the proceeds of sale in the hands of the trustees ranking for priority against the proceeds of sale in the same order as against the land before sale. As to registration as land charges of general equitable charges affecting land in Middlesex and Yorkshire, see *ante*, p. 5.

Liability to be transferred to proceeds of sale.

In order that a mortgage under hand only may be liable to duty at the lower rate it must be "an agreement or memorandum under hand only, relating to the deposit of title deeds or instruments constituting or being evidence of title to any property whatever (other than stock or marketable security) or creating a charge on such property," Stamp Act, 1891, s. 86 (2). Where, however, the equitable mortgage under hand only contains provisions such as a power of sale, or other provisions, which put the mortgagee nearly in as good a position, except as to being able to convey the legal estate, as if he had taken a legal mortgage, the mortgage becomes liable to duty at the higher rate under s. 86 (1), (*e*).

Equitable charge, when liable to duty at lower rate.

An equitable mortgage under hand only which contains an agreement to execute a legal mortgage should be stamped at the lower rate, as a mortgage by deposit operates as an agreement to grant a mortgage: *Parker v. Housefield*, 2 Myl. & K. 419; *secus* if the agreement to execute the mortgage is under seal: *United Realization Co., Ltd. v. I. R. Commrs.*, [1899] 1 Q. B. 361. As to the stamp on the subsequent legal mortgage, see Alpe, 16th ed., 191.

Equitable mortgage not entitled to notice before being paid off.

An equitable mortgagee by deposit of title deeds is not entitled to six months' notice or six months' interest in lieu of notice before being paid off, see *Fitzgerald's Trustee v. Mellersh*, [1892] 1 Ch. 385; but the mortgagor is entitled to six months for redemption: *Parker v. Housefield*, *sup.* In a compulsory district where the land is not registered nor the deeds deposited, a caution against first registration should be entered on the register: L. R. Act, 1925, s. 53; L. R. R. 64.

(*e*) Interest is payable even if not mentioned: *Re Drax*, [1903] 1 Ch. 781; *Re MacDermott*, [1912] 1 Ir. R. 166.

advanced, of every other sum wch may hrafter be advanced by you to me with intt thron at the rate afsd from the time of the same being so advanced], & also with the paymt on the — day of — & the — day of — in every yr of intt at the rate afsd on the ppal moys for the time being due on this secy.

Dated, &c.

Signed, C. D.

The Schedule above referred to.

LII.

MEMORANDUM *under HAND only, to accompany a DEPOSIT of DEEDS.*

To A., &c.

I, B., hby declare that I have deposited the munimts of title specified in the schdle hto with you to secure the repaymt to you on demand of the sum of £—— now lent by you to me (the rect whrof I hby acknowe), togr with intt thron until paymt at the rate of £—— p.c. p.a. from the date of this memorandum.

Dated, &c.

Signed, B.

The Schedule above referred to.

LIII.

MEMORANDUM *by a MARRIED WOMAN to accompany DEPOSIT of JEWELS (a) handed to a MORTGAGEE as FURTHER SECURITY for the MORTGAGE DEBT.*

To A. (hrinar called the mtgee).

Declara-
tion of
deposit.

1. The articles specified in the schdle hto, wch I, the undersigned X., the wife of Y., have this day deposited with the mtgee, are to be held as secy for the repaymt to the mtgee of all the ppal moys, intt, & costs due or to become due to him

(a) Delivery of chattels to a bailee for the purpose of creating a future pledge is a good delivery, whenever that pledge comes to be created : *Blundell-Leigh v. Attenborough*, [1921] 3 K. B. 235.

under a mtge dated the ——— day of ——— & made betn the sd Y. of the first part, myself of the second part, ——— of the third part, & the mtgee of the fourth part.

2. I hby authorise the mtgee if the power of sale applicable to the sd mtge shl become exercisable to sell the sd articles or any of them at any time or times, either togr or in pcels, & either by public auction or private contract, & in any way & for any price he may think pper, & out of the proceeds throf, after paying all expses of & attendg such sale, to retain all moys for the time being due under the sd mtge, & to pay the residue throf (if any) to me. Power of sale.

3. I hby declare that although as betn myself & my sd husband I am only a surety for the ppal moys & intt secd by the sd indre, yet as betn myself & the mtgee I am liable as a ppal debtor for all such ppal moys & intt. Declaration as to primary liability.

4. The mtgee shl not, &c., *continue mtgee's indemnity clause*, p. 174, f. 12.

Dated, &c.

Signed, X.

The Schdle above referred to.

LIV.

MEMORANDUM *under HAND only, to accompany DEPOSIT of DEEDS to secure an ACCOUNT CURRENT at a BANK (b).*

To Messrs. A. B. & Co. [the X. Bankg Co., Ltd.]

I, C. D., hby charge [my life intt in] the ppty described in the schdle hto [or, “described in the deeds mentd in the schdle hto ”] with the paymt to you on demand of the balance wch on my acct current with you shl for the time being be owing in respt of bills, notes, or drafts acceptd, pd, or discounted, or advances made to me or for my use or accomodon, & for intt, commission, or other usual bankers charges or orwise, togr with intt on the sd balance from the time of such demand being made or left till the time of paymt, at the rate of £—— p.c. p.a.

Dated, &c.

Signed, C. D.

The Schdle above referred to.

(b) As to the stamp and notice of subsequent incumbrances, see *ante*, p. 215, note (d).

LV.

MEMORANDUM *under HAND only to accompany*
 DEPOSIT of a BUILDING AGREEMENT to secure
advances to be made thereunder (b).

To A., &c.

I, B., builder, hereby declare that I have deposited the agrmt, dated the — day of —, & made under our respive hands [& seals] to secure repaymt of the sum of £—, this day advanced by you to me, psuant to the sd agrmt in respt of houses partially erected on plots numbered — to —, in the plan thrto annexed, & of all further sums hrafter to be advanced by you or on your behalf to me in psuance of the sd agrmt, with intt thron in the meantime at the rate of £— p.c. p.a. from the time of the same being advanced, & with intent to charge thrwith the benefit of the sd agrmt & all my intts psnt & future in the ppty or plots of land comprised thrin & in all bldgs now or hrafter to be erected thron, [& I declare that as & when any lease or leases of the sd ppty or plots of land & bldgs or of any pt thof shl be grted to me in psuance of the sd agrmt I will forthwith at your reqt & at my own cost demise [charge] the same to you by way of legal mtge, to be in such form as you may approve, & in substitution, as regards the premes comprd thrin, of the psnt charge to secure the repaymt of such pt (if any) of the ppal sum then owing on the secy hrof, as in accdce with the sd agrmt shl have been advanced in respt of the same premes [or shl be attributable thto], togr with all intt then due or thrafter to become due in respt of any such sum] (a).

Dated, &c.

Signed, B.

(b) See *ante*, p. 215, note (d). As to notice where the mortgage is to a stranger, see *Union Bank, etc. v. Kent*, 39 Ch. D. 238, and cf. L. P. Act, 1925, s. 3 (1) (c).

(a) A power of sale might be inserted; but if the building agreement is framed on the lines of the precedent given in Vol. I., *sub-tit.* LEASES (HOUSES), the freeholder will have his remedy by re-entry if the buildings are not proceeded with or if the builder refuses to take up his lease and to give a legal mortgage to secure the sum then due from him in respect of advances: see *ante*, p. 211, note (b).

LVI.

MEMORANDUM *under HAND only, to accompany the*
 DEPOSIT of a LIFE POLICY *with the ISSUING OFFICE.*

To the ——— Insee Co.

I hby declare and agree that you have this day advanced to me the sum of £—— on acct of the sum insured by the poly No. ———, dated the ——— day of ———, and that the sd sum of £—— is intended to bear intt from the date hrof at the rate of £5 p.c. p.a., payable on the 31st day of Deer. in every yr & that such intt & any intt arisg under this provon if not pd within ——— days after the 31st day of Deer. in any yr shl thenceforth bear intt at the like rate & accumulate as & by way of compound intt (x) until the sd sum of £—— & intt & all accumulons of intt shl be fully pd & satisfied, or shl have been deducted from the sum insured by the sd poly in case the moy thby intended to be seed shl become payable. And I hby charge all moys to become payable under the sd poly with the paymt of the sd ppal moys & intt at the rate & in mner afsd.

And I further agree that any sum which may hrafter be added by way of bonus to the sd poly shl remain as an addon to the sum insured until all sums due to you on this secy shl have been fully pd & satisfied.

Dated, &c,

Signed, C. D.

LVII.

MEMORANDUM *under HAND only, to accompany the*
 DEPOSIT of MISCELLANEOUS SECURITIES *to secure the*
 payment of BILLS of EXCHANGE *at maturity (b).*

To Messrs. A. & Co.

WE, B., C., & D., trading under the firm name of B. & Co., hby declare that we have deposited with you the documts

(x) See *ante*, p. 32, note.

(b) A mortgages by deposit of certificates of shares has an implied power of sale; see *ante*, p. 196, note.

mentd in the first schdle hto, to secure the paymt at maturity of each & all of the Bills of Exchange specified in the second schdle hto.

Dated, &c.

Signed, B. & Co.

Two Schdles.

LVIII.

EQUITABLE CHARGE *under HAND of an UNDIVIDED SHARE in PROCEEDS of SALE of LAND for securing SEVERAL SUMS advanced by THREE separate PERSONS (a).*

To B., C., & D., *mtgees.*

I, A., *mtgor*, hrbly charge ALL THAT one-fourth pt or share & all other (if any) my pt or share & intt of & in the proceeds of sale & rents & profits until sale of the ppty set out in the schedule hrto with the repaymt to you on the — day of — next of the sum of £ *total sum* advanced as to £ — by B. as to £ — by C. and as to £ — by D. (the receipt whrof I hby acknowledge) with intt in the meantime at the rate of £ — p.c. p.a. (b). AND I further agree at my own cost when so required by any of you to execute a formal assnmt subjt to redmon (c) of my sd pt or share hby charged with such costs on my pt and such power of sale & other powers & provons as the person or persons making such request shl reasonably require for better & further securing the repaymt of all the sd moys & intt PROVIDED ALWAYS that the sd three sums of £ —, £ —, & £ —, & the intt thron, shl be chargeable upon & be raisable & payable out of the sd share & premes hby charged thwith, rateably & witht any preferce or priority betn themselves.

IN WITNESS, &c. (d).

Schedule.

Proviso
that loans
shall rank
equally.

(a) See the notes to Precedent XXXV., and the contributory mortgage, *ante*, p. 103, and the note thereto.

(b) Add if desired declaration of trust, *ante*, p. 212, substituting A. for "I," and power to appoint new trustees.

(c) See *ante*, p. 211, note (b).

(d) Notice of this charge must be given to the trustees.

LIX.

MORTGAGE of FREEHOLDS by way of COLLATERAL SECURITY (c).

PARTIES, defined as in *Prec. I.*, p. 83: WHAS by a mtgee of Parties.
 even date with & made betn the same pties as are pties to Recitals.
 this deed in conson of the sum of £—— pd to the borr by the
 mtgee, the borr has mtged certain ppty situated at —— to the
 mtgee for securg the repaymt of the sd sum of £—— with intt
 thron at the rate of £—— p.c. p.a.: *Agrmt for further security*,
 p. 14, f. 19.

NOW THIS DEED made in psuance of the sd agrmt & in
 conson of the sum of £—— so pd to the borr by the mtgee
 WITNESSETH as follows:—

Wit-
 nessth.

1. The borr as benefl owner hby demises (f) unto the mtgee,
Parcels, Vol. I., pp. 480 *et seq.*: *habendum*, p. 22, f. 1. *Proviso*
for redmon, p. 24, f. 1.

2. The borr hby covts with the mtgee AND IT IS HBY AGRD
 & DECLARED AS FOLLOWS:—

(i) *Covenant to repair & insure*, p. 40, f. 4, or p. 43, f. 5.

[(ii) *Covenant against registron if required*, p. 45, f. 10.]

(iii) The statutory power of sale shl become immedly exercis-
 able by the mtgee, witht the necessity of giving any notice
 in that behalf to the borr at any time or times after the power
 of sale applicable to the sd mtge of even date herewith shl
 have become exercisable.

(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11, saying,
 “incurred hrunder or under the sd mtge of even date here-
 with,” and later, “apptd by the same mtge.”

(v) *Clause preserving right of consolidation*, p. 74, f. 13.

[3. *Attornment clause*, p. 75.]

IN WITNESS, &c.

(c) As to the stamp on a collateral security, see the Stamp Act, 1891. Stamp.
 Sched. “MORTGAGE”; Revenue Act, 1903, s. 7, which is not retrospective:
Lord Suffield v. I. R. Commrs., [1908] 1 K. B. 855. As to the reasons for
 using collateral securities, see 2 *Dav. Prec.* 4th ed., pt. 2, p. 532.

(f) Or “hby charges by way of legal mtgee ALL *etc.* with the
 paymt to the mtgee of the ppal moy intt & other moy secured by
 the sd mtge of even date herewith,” omitting the proviso for
 redemption.

LX.

DEED of FURTHER CHARGE (a) of FREEHOLDS, and LEASEHOLDS, ENDORSED on the MORTGAGE. VARIATIONS for SUPPLEMENTAL or INDEPENDENT DEED. Also, where there has been a PREVIOUS FURTHER ADVANCE, and where the Deed is to secure FUTURE FURTHER ADVANCES (b).

Parties. *PARTIES as in Prec. I., p. 87.*

Recitals. *Recite state of mtge debt, p. 12, f. 11, or p. 12, ff. 12 or 13 [with variation in note (c) on p. 12, if there has been a previous further advance]: agrmt for present advance, p. 13, f. 15 [or, where there are to be future advances, p. 11, f. 4, saying "the further sum of £——."] NOW THIS DEED made in psuance of the sd agrmt & conson & receipt clause, p. 14, f. 1, WITNESSETH as follows :—*

Further charge by assignee of equity of redemption. *(a) As to deeds of further charge see 2 Dav. Prec., 4th ed. pt. 2, p. 756; Elph., Introd., 7th ed. 282. As to the effect of a further charge by an assignee of the equity of redemption on the mortgagee's right to sue the original mortgagor for the original debt, see Kinnaird v. Trollope, 39 Ch. D. 636; 32 Sol. J. 717.*

Stamps. *As to the stamps on further charges, see the Stamp Act, 1891, Schedule, "MORTGAGE," and previous to that Act, see 2 Dav. Prec., 4th ed. pt. 2, p. 258, note.*

Variations for supplemental deed. *(b) A further charge should, whenever convenient (which is not usually the case where the parties have separate solicitors), be endorsed on the mortgage, as in the text; otherwise it may, to save recitals, be made supplemental to the mortgage; in which case the following recital should be inserted:— "Whas this deed is suppl to a mtge (hrinar called the ppal mtge) dated, &c., & made, &c., being a mtge for securg the paymt of the sum of £—— & intt to the mtgee."*

If there has been a previous further charge, add: "& to another deed dated, &c., & made, &c., being a further charge for securg the paymt, &c." If there has been a transfer, this deed may be annexed in like manner to the transfer. It may be convenient to distinguish each prior deed by a short designation, by saying "hrinar called the mtge," or "first further charge," or "transfer." Matters contained in the mortgage or other prior deeds may be referred to as "recited," or "contd," or "mentd," in the "ppal mtge," or as the case may be.

The same for independent deed. *If the further charge is by independent deed, the recitals will be as in the next Precedent; and subsequently for "within written," and "within mentd," &c., say, "hrinbfe recited," or, "hrinbfe mentd," &c.*

1. *Covenant for paymt of psnt advance & intt*, p. 15, f. 1
[*in case of further advances*, p. 18, f. 6] & *intt after default*,
p. 17, f. 2.

2. *Covenant by mtgee to make further advances*, p. 33, f. 8.

3. The borrr as **benefi owner** hby declares that ALL AND SINGR Charge.
the ppty & premes comprised in the within-written mtge
shl be a secy for & stand charged with the paymt to the mtgee
of as well the sd sum of £——, *the existing debt*, & all intt due
& to grow due for the same as the sd sum of £——, *the present
advance* & the intt thron from the date hrof at the rate of £——
p.c. p.a. [and also such further sum or sums as may hrafter
be advanced psuant to the covt by the mtgee hrinbfe contd
with intt thron at the rate afsd from the time of the same
reply being advanced] & shl not be redeemable until paymt
to the mtgee of as well the sd sum of £——, *the existing debt*,
& intt as the sd sum of £——, *the psnt advance*, & intt [& such
further sum or sums as afsd & intt].

4. The borrr hby covts with the mtgee AND IT IS HBY AGRD
& DECLARED AS FOLLOWS :—

(i) The provon contd in the within-written mtge for reducing Proviso
the intt on the sd sum of £——, *the original mtge debt*, for reduc-
to the rate of £—— p.c. p.a. [if there has been a previous tion of
further charge, add “ wch provon is by the sd ” *previous further interest*
charge “ extended & applied to the sd sum of £—— ” *the to apply*
previous further advance “ & intt ”] shl [also] extend & to new
apply to the intt on the ppal moys hby seed, in the same advance.
mner as if the same provon were hrin repeated with respect
to the same.

(ii) The covenants [power of sale & provons ancillary thto Pro-
& other] powers & provons (a) contd in the within-written visions of
mtge (b) shl operate & take effect in like mner for securing mortgage
to extend

(a) Where the statutory power of sale is relied on in the mortgage, it will As to
not generally be necessary to refer to it in the further charge, as it will statutory
continue to apply without express incorporation; and if the statutory power of
power is modified by a provision in the mortgage, it will continue to apply, sale, &c.
subject to such modification, without being expressly mentioned, by
virtue of the clause in the text, extending all the provisions of the mortgage
to the further advance; but the terms of the further advance may
of course be such as to render some special extension or modification of the
statutory power necessary, which must be effected by a separate clause. These
remarks apply also to the statutory powers of insurance and appointing
receivers, as to which see *ante*, pp. 40 and 77, notes.

(b) If there has been a previous further charge, say here, “ wch are by

to present
advance. paymt of the ppal moys hby seed as if the same moys had
formed pt of the ppal moys seed by the within-written mtge
[but so nevertheless that the rights of the sd *surety* under the
within-written mtge shl be postponed to this seey (c)].

[(iii) *Covenant against registron of freehds*, p. 45, f. 10, if
required.]

[(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11, if not
in original mtge.]

IN WITNESS, &c.

LXI.

DEED of FURTHER CHARGE of FREEHOLDS, and
LEASEHOLDS, the ORIGINAL MORTGAGE having been
TRANSFERRED, the rate of INTEREST and half-
yearly days of PAYMENT being ALTERED and ADDI-
TIONAL FREEHOLDS being added to the SECURITY (d).

PARTIES defined as in *Prec. I.*, p. 83, saying in the case of the
borr, “& of the term created by the lease hby mtged.”

Recitals. *Recite lease to mtgor* [or to X.], p. 7, f. 3; [devolution of title
to mtgor, p. 8, f. 4, or assmnt of lease to mtgor, Vol. I., p. 452;
the mtge, p. 9, f. 10; transfer to mtgee; Vol. I., p. 448; state
of mtge debt, p. 12, f. 11, or p. 12, ff. 12 or 13; title to additional
freehds, p. 7, f. 1. AND WHAS the mtgee has agrd to lend to the
Agree- borrr the further sum of £——, & upon the treaty for the sd loan
ment. it was agrd that the sum of £—— now due on the seey of the
Consoli- recited mtge, & the sd sum of £——, the new advance, shd be con-
dation of solidated into one ppal sum of £——, & that intt shd be
original hrafter payable on the sd aggregate ppal sum at the rate of
and new £——, in lieu of the brinbfe mentd rate of £—— p.c. p.a., &
advance. that the paymt of the sd aggregate sum of £—— & intt
shd be seed in mner hrinar appearg: NOW THIS DEED
made in psuance of the sd agrmt, & in conson of the sum

the sd *first further charge*, extended & made applicable
thereto.”

(c) The words in this bracket will be added if a surety for the original
mortgage debt concurs in the deed.

(d) See the variations in the last Precedent. Cf. this precedent with
Precedent LXXVI., *post*, p. 249.

of £—— now owing by the borr to the mtgee upon the secy of the recited mtge as afsd, & of the further sum of £—— now advanced by the mtgee to the borr (the rect, whrof the borr hby acknowes) WITNESSETH as follows :—

Wit-
nesseth.

1. *Covenant for paymt of aggregate debt with intt at new rate*, p. 15, f. 1, & *intt at new rate after default*, p. 17, f. 2.

2. The borr, as **benefl owner**, hby declares that ALL & SINGER the freehd & leasehd hds & premes comprised in the recited mtge, & wch were by the recited transfer assned to the mtgee, shl henceforth be discharged from the equity of redmon sub-sistg thrin by virtue of the sd mtge but shl be subjt to the proviso for redmon hrinar contd.

To be
subject to
new pro-
viso for-
redemp-
tion.

3. The borr as **benefl owner** hby demises (e) unto the mtgee, *Parcels for addonal freehds*, Vol. I., pp. 480 *et seq.*; *habendum*, p. 22, f. 1; *Proviso for redmon*, p. 24, f. 1, *on paymt of the consolidated loan with intt*, saying “the terms subsisting under the sd mtge & hby created resptly in all the sd premes.”

Demise of
new free-
holds.

4. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Proviso for reduction of intt on punctual paymt*, p. 29, f. 1.

(ii) The [power of sale & provons ancillary thereto & other] powers & provons contd in the recited mtge shl operate & take effect in like mner for securing the sd sum of £——, *the aggregate debt* & intt, as if such [power of sale & provons ancillary thereto & other] powers & provons were hrin repeated with such alterations only as wd be necy in consequence of the transfer of the sd mtge debt of £——, *the original debt* & intt, & the secs for the same to the mtgee & of the consequent substiton of the mtgee for the sd K. *the original mtgee*, & in consequence of the change in the amt of the ppal moys seed & of the rates of intt payable thron & in the respective days apptd for paymt of such ppal moys & intt.

Powers in
original
mortgage
to extend
to new
advance.

(iii) The covts, powers, & provons in reference to the [repair &] insce of the mtged premes contd in the recited mtge (a)

Insurance
clauses in
mortgage

(e) Or “hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of all the ppal moy intt & other moy hby covtd to be pd by the borr,” omitting the proviso for redemption.

(a) If the transfer gave any new powers, the above clauses should of course be modified so as to extend to such powers. If the original mortgage contains an express power of sale, it should be repeated here with respect

to extend shl extend & be applicable to the freehold ppty & premes hby
to new mtged in the same mner in all respts as if the same had been
freeholds. hrin repeated with respt to all the ppty & premes comprised in
the recited mtge & this deed resply, with such alterons as may
be necy as afsd [& with the substiton of the sum of £——
in lieu of £—— as the total amt of the sd insce].

[(iv) *Covenant against registron of addonal freehds if required,*
p. 45, f. 10.]

(v) *Charge of mtgee's expenses with intt,* p. 74, f. 11.

IN WITNESS, &c.

LXII.

FURTHER CHARGE *by way of* LEGAL MORTGAGE (b).

THIS FURTHER CHARGE made, &c., between *parties as in Prec. I., ante*, p. 83. Suppl to a legal charge (hrinar called the ppal deed) dated, &c., & made between the same parties as are parties herto & in the same order for securg the sum of £—— & intt of £—— p.c. p.a. on freehold [leasehold] land at *state parcels in ppal deed* WITNESSETH as follows :—

1. In conson of the fur sum of £—— now pd to *borr* by *mtgee* (the receipt whrof the *borr* doth hby acknowledge) *continue covt by borrr to pay fur advance & intt & intt after default*, p. 15, f. 1 and p. 17, f. 2.

2. For the conson afsd the *borrr* as *benefl owner* hby charges by way of legal mtge the premes comprised in the ppal deed with the paymt to the *mtgee* of the ppal moy & intt hrinbfe covtd to be pd as well as the ppal moy intt & other moy secured by the ppal deed.

IN WITNESS, &c.

to the additional freeholds instead of being incorporated by reference, which would make the original mortgage a title deed to that property.

(b) This precedent is a copy of Form 2 of the Fifth Schedule of the L. P. Act, 1925. It is intended to be used where the original mortgage was made by charge by way of legal mortgage as in Precedent II., *ante*, p. 84.

LXIII.

DEED of FURTHER CHARGE to a BUILDING SOCIETY, *incorporated under the BUILDING SOCIETIES ACT, 1874 (a).*

PARTIES, defined as in *Prec. XXV.*; supply to a mtge from the borr to the Socy (hrinar called the ppal mtge), dated, &c., & made, &c., in conson of the further sum of £—— now advanced by the Socy to the borr, makg up togr with the sum of £—— already advanced to him by the Socy, & seed by the ppal indre, the amt to wch he is entitled acedg to the rules in respt of —— shares held by him in the Socy (the rect of wch sum of £—— is hby acknowledged), WITNESSETH as follows:—

1. The borr hby covts with the Socy to pay to the Socy acedg to the rules throf the sum of £—— per [month] *continue covt by borr for paymt of instalmts & fines in respect of new advance*, p. 132.

Wit-
nesseth.
Covenant
for pay-
ment.

2. The borr, as **benefl owner**, hby declares that all the ppty described & comprised in the ppal mtge shl be a seey for & stand charged with the paymt to the Socy of as well the moys, fines, & fees payable in respt of the sd origl advance of £—— seed by the ppal mtge, as of the moys, fines, & fees payable in respt of the sd further advance of £——, & shl not be redeemable until paymt of the whole of the sd moys, fines, & fees, acedg to the covts contd in the ppal mtge & this deed.

Charge.

3. The borr hby covts with the Socy AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

(i) The powers, trusts, covts, & provons in the ppal mtge contd for better securg the paymt of the moys, fines, & fees thby seed, or orwise relatg thto, shl extend & be applicable to secure the paymt of the moys, fines, & fees hby covtd to be pd in the same mner as nearly as may be as if the same had been hrin repeated with reference to all the moys, fines & fees seed by the sd mtge & this deed resply.

Powers in
mortgage
to extend
to further
advance.

[*(ii)*, &c. *Continue Prec. LX.*, p. 222, *clause 4* (iii.) and (iv.).]

IN WITNESS, &c.

(a) See Precedent XXV., *ante*, p. 131, and the notes thereto; and the notes to Precedent LX. As to registered land, see L. R. R. 93.

LXIV.

DEED of FURTHER CHARGE of a LIFE INTEREST in
PERSONALTY and POLICIES where a FRESH POLICY
is added to the SECURITY, ENDORSED on the ORIGINAL
MORTGAGE (b).

PARTIES, as in *Prec. I.*, p. 83.

Recitals.
Agree-
ment for
loan.

Recite title to new poly, p. 3, f. 3; *state of mtge debt, some intt being due*, p. 8, f. 6; AND WHAS the mtgee has agrd to lend the borr the further sum of £—— upon having the repaymt throf & intt seed & the paymt of the within-mentd sum of £——, & the intt now due & henceforth to become due for the same, further seed in mner hrinar appearg. NOW THIS DEED made in psuance of the sd agrmt & in conson of, *the new advance*, p. 14, f. 1, and also, *the old debt*, p. 15, f. 3, WITNESSETH as follows :—

Wit-
nessest.

1. *Covenant for paymt of new advance & intt*, p. 15, f. 1, & *intt after default*, p. 17, f. 2.

Assign-
ment.

2. The borr as **benefl owner** hby assns unto the mtgee ALL THAT, *parcels for new poly as in Prec. XVI.*, p. III; 'To HOLD UNTO the mtgee subjt to the proviso for redmon hrinar contd; *Proviso for redmon*, p. 26, f. 2, *on paymt of* "the sd sum of £——, *the old debt*, with intt thron from the —— day of ——, at the rate afsd, & the sum of £——, *the new advance*, with intt thron from the date of this deed, at the rate afsd."

Proviso
for re-
demp-
tion.

Charge.

3. The borr as **benefl owner** hby declares that ALL & SINGULAR the dividends, intt, & income, pols, moys, & premes by the within-written mtge assned, & remaing subjt to the provons throf, & also any new poly or pols already or hrafter to be effected acedg to the provons contd in the same mtge shl stand charged with, *continue as in Prec. LX.*, p. 223, *omitting variations in brackets*.

4. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

Provi-
sions in
mort-
gage to

(i) All the covts, powers, trusts & provons contd in the within-written mtge in refere to the pols thby mtged, or any substituted poly or pols, or to any moys weh may be received by virtue

(b) See the variations in Precedent LX., *ante*, p. 222.

throf & the [power of sale & provons ancillary thereto, &] other powers & provons thrin contd, shl operate & take effect in the same mner for securing the sd sum of £——, *the psnt advance*, & intt thron as if the same were hrin repeated with such alterons as wd be neey in consequence of the change in the amt of the ppal moys secd.

extend to
fresh ad-
vance.

(ii) All the covts, trusts, powers, & provons contd in the sd mtge in relation to the pols thby mtged, or any substituted poly or pols, or to any moys weh may be received by virtue throf, shl extend & be applicable to the sd poly hby mtged, or any substituted poly or pols, & the moys weh may be received by virtue throf, in the same mner in all respts as if the same, with such alterons as afsd, had been inserted in this deed with respt to the poly hby mtged, & any substituted poly or pols & to any moys weh may be received by virtue throf: [PROVD ALWAYS, that all moys pd by the mtgee for keepg up or restorg any of the pols comprised in the sd mtge or this deed or any substituted poly or pols or any of them or for effectg any such new poly shl be deemed to be properly pd by him or them.]

And to
new
policy
(c).

[(iii) *Charge of mtgee's expenses with interest if not in original mtge, p. 74, f. 11.*]

IN WITNESS, &c. (a).

(c) See *ante*, p. 223, note (a).

(a) Notice of this deed must be given to the trustees of the settlement and to all the offices: see *ante*, p. 110, note (b).

LXV.

MEMORANDUM of FURTHER CHARGE by ENDORSEMENT
on the MORTGAGE applicable to ANY kind of PROPERTY (b).

Charge. I, the within-named A., *mtgor*, as **benefl owner**, hby charge the within-mtged — & premes with the paymt of the further sum of £——, this day advanced to me by the within-named B., *mtgee*, with intt thron at the rate of £—— p.c. p.a., payable on the — day of — & — day of — : And I declare that, *continue provision for reduction of interest on new advance, as in Prec. LX., paragraph 3, p. 223.* AS WITNESS my hand & seal, this — day of —.

LXVI.

SUB-MORTGAGE (c) of FREEHOLDS & LEASEHOLDS.

Recitals. *PARTIES, defined as in Prec. I., p. 83, saying in respt of the borr “in respt of the mtge terms hby sub-demised [charged].”*

(b) If the original mortgage comprised a legal estate in land and were accompanied by a deposit of the title deeds no further steps need be taken by the mortgagee. But if the original mortgage were a puisne mortgage or a limited owner's or general equitable charge the further charge should be registered as a land charge. If the original mortgage comprised an equitable interest in land or personalty notice of the further charge should be given to the trustees.

(c) Sub-mortgages of legal estates in freehold and leasehold and are made in the same form as original mortgages, *i.e.*, by sub-demise out of the original mortgage term or by charge by way of legal mortgage. A sub-mortgagee has power under ss. 88 (5), 89 (5), of the L. P. Act, 1925, in the case of freehold and leasehold land respectively to convey the fee simple and head term, as the case may be, or to acquire the same by foreclosure enlargement or otherwise as in the case of an original mortgage.

Use of
sub-mort-
gage.

A sub-mortgage should be used in preference to a transfer of part of a mortgage debt, since if a transfer of part only of a mortgage debt is made without the concurrence of the mortgagor and his subsequent incumbrancers, the original mortgagee and the transferee must concur in foreclosure, on the ground that the mortgagor or subsequent incumbrancer ought not to be harassed by a multiplicity of actions.

En-
quiries.
Notices.

Before completion the sub-mortgagee should enquire from the original mortgagor as to the state of accounts between him and the original mortgagee, and after completion should give him notice of the sub-mortgage: *Bateman v. Hunt*, [1904] 2 K. B. 530. As to the position of an equitable sub-mortgagee,

Recite lease to original mtgor [or to X.], p. 7, f. 3; [devolution of title to original mtgor, p. 8, f. 4, or assmnt to original mtgor, Vol. I., p. 452]; the origl mtge (hrinar called the original mtge), p. 9, f. 10, *noticing the power of sale (if any), or provisions relating thereto, & any provision, e.g., for reduction of intt on punctual paymt, relatg to the terms of repaymt of the loan; state of mtge debt*, p. 12, f. 11, or p. 12, f. 12; *agrmt for loan*, p. 10, f. 1; NOW THIS DEED made in psuance of the sd agrmt &, *conson & receipt clause*, p. 14, f. 1, WITNESSETH as follows:—

Wit-
nesseth.

1. *Covenant for paymt of ppal & intt & intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The *borr*, as *benefl owner*, hby assns unto the mtgee ALL THAT the sd ppal sum of £—— so owing as afsd to the *borr* upon the seey of the original mtge, & all intt [now due &] henceforth to become due for the same, AND the benefit of [the power of sale &] all powers & provons conferred by or contd in the original mtge, AND ALL other sees for the same ppal sum & intt (d), To HOLD UNTO the mtgee, subjt to the proviso for redmon hrinar contd.

Assign-
ment of
mortgage
debt.

3. The *borr* as *benefl owner*, hby demises (e) unto the mtgee, ALL & SINGR the sd freehold ppty & premes comprised in & assured by the original mtge, To HOLD THE SAME UNTO the mtgee for all the residue now unexpired of the term subsisting under the original mtge less the last 10 days throf witht impeachmt of waste, subjt to such right of redmon as the same premes are now subjt to by virtue of the original mtge. & subjt to the proviso for redmon hrinar contd.

Demise of
freeholds.

4. The *borr*, as *benefl owner*, hby demises (e) unto the mtgee ALL & SINGR the sd leasehold ppty & premes comprised in & demised [assured] by the original mtge, To HOLD THE SAME UNTO the mtgee for all the residue now unexpired of the sd term of —— yrs demised [assured] by the original mtge less the last 10 days throf subjt to such right of redmon as the

Demise of
lease-
holds.

see *Hopkins v. Hemsworth*, [1898] 2 Ch. 347; *De Lisle v. Union Bank of Scotland* [1914] 1 Ch. 22.

As to trustees investing on a sub-mortgage, see *Smethurst v. Hastings*, Trustees, 30 Ch. D. 490; *Chapman v. Browne*, [1902] 1 Ch. 785.

(d) As to inserting a power of attorney, see *ante*, p. 69, note.

(e) Or “hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the *borr*,” omitting the proviso for redemption.

Proviso
for
redemp-
tion.

same premes are now subjt to by virtue of the original mtge, & subjt to the proviso for redmon hrinar contd ; *Proviso for redmon*, p. 25, f. 1, *using alternative form in brackets & saying*, " reasn the sd mtge debt & intt to the borr & the sd sub-terms hby created shl absolutely cease & determine & become merged in the revers immediately expectant thron respctively, subjt nevertheless as to the sd freehd & leasehd premes to such right of redmon as shl be subsistg thrin respctly by virtue of the original mtge."

5. AND IT IS HRBY AGRD & DECLARED AS FOLLOWS :—

(i) *Proviso for reductn of intt on punctual paymt*, p. 29, f. 1.

Mort-
gagee
need not
enforce
original
mort-
gage.

(ii) It shl not be incumbent on the mtgee to enforce or realise the secy created by the original mtge, or to take any steps or proceedings for that ppose unless he shl think fit, & he shl not be answerable or responsible for any loss occasioned by any delay or omission in any such respct.

(iii) If the mtgee shl exercise the power of sale applicable to the original mtge, the pchaser shl not be bound to inquire whether the power of sale applicable to this deed is exercisable, or whether any moy remains due on this secy.

(iv) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

IN WITNESS, &c.

LXVII.

MORTGAGE of FREEHOLD BUILDING LAND and SUB-MORTGAGE of BUILDING AGREEMENT to secure ADVANCES to be made to the BUILDER on behalf of the MORTGAGOR in performance of the latter's covenant. THE BUILDER joins as SURETY to covenant for payment of PRINCIPAL and INTEREST and otherwise. VARIATION where LEASES on some of the PLOTS have been taken up.

Parties.

PARTIES, A., *mtgor* (hrinar called the borr *defing* the borr as in *Prec. I.*, p. 83), 1 ; B., *builder* (hrinar called the builder), 2 ;

Recitals.

C., *mtgee* (hrinar called the mtgee), 3. *Recite title of mtgor*, p. 7, f. 1, " of the freehd ppty or plots of land hby mtged, &c., subjt to the agrmt next hrinar recited " [subjt as to the plots Nod — to — on the plan hto, to the leases so far as the same may now be subsisting and affectg the same respctly hrinar mentd, & as to the remr of the sd plots to the

agmt next hrinar recited], but orwise free from incumbees. *Recite bldg agmt* (hrinar called the bldg agmt), *noticing clauses as to the erection & completion of bldgs & works the leases to be granted on completion & the forfeiture clause, & continue*, "AND it was further agrd that during the progress of the sd bldgs the borr shd make advances to the blder for the ppose of enabling him to complete the same, at intt, in mner & to the extent provd in the first schdle hto upon the seey of a deposit of the buildg agmt, & of a covt on the pt of the blder thrin contd, to demise [charge] each lease grted in psuance throf to the borr by way of legal mtge & in substitution as regards the premes comprised in any such lease of any charge previously created by deposit thron, to secure the repaymt of so much of the ppal sum advanced & then remaing unpaid as it was agrd should be attributable to the same premes, with intt as thrin mentd: AND WHAS on the — day of —, the bldg agmt was deposited with the borr, & by a memo in writing of even date thrwith, signed by the blder, it was decl'd that the bldg agmt was so deposited by way of equitable mtge or charge of the benefit throf, & of all the intt of the blder then psnt or future in the ppty or plots of land comprised thrin, & in all bldgs then or thrafter to be erected thron, to secure repaymt of a sum of £—— (being the aggregate amt of the sevl sums mentd in the second column of the second schdle hto), as having then been advanced in respt of houses then in course of constron on the plots numbered resply as in the first column of the same schdle mentd, & also of all further sums thrafter to be advanced by the borr, or on his behalf to the blder, psuant to the sd agmt, with intt on such sums resply at the rate of £—— p.c. p.a. from the date of the advance throf: AND FURTHER, that when & so soon as any lease or leases of the sd ppty or plots of land & bldgs, or of any pt throf, shd be grted to him, the blder wd at the request of the borr & at his own cost demise [charge] the same to the borr by way of legal mtge in acedce with the covt in that behalf contd in the bldg agmt: AND WHAS in psuance of the bldg agmt the borr has from time to time made further advances in respt of the premes comprised thrin, that is to say, in respt of each house then in course of erection on the plots numbered as in the first column of the sd second schdle hto mentd, the advances specified in the second column of the same schdle, on the dates specified in the third column throf

Building
agree-
ment.

Deposit
of build-
ing agree-
ment.

Further
advances
made.

Leases
granted.

Agree-
ment by
mort-
gagee to
advance.

making with the sd sum of £—— advanced as afsd an aggregate advance on the secy of the sd deposit of £—— : [AND WHAS in further psuance of the bldg agrmt separate leases have been grted by the borr to the blder of the plots of land with the houses erected thron comprised in the second pt of the second schdle hto by deeds short parlars whrof are contd in the fourth column throf, & are thrin set opposite to the numbers of the plots to wch they resply relate : AND WHAS all advances made in resp't of the sevl plots whrof leases have been grted as afsd have either been repaid by the blder to the borr or separately seed by legal mtges of the same plots in accedce with the covt in that behalf hrinbfe mentd & contd in the bldg agrmt] : AND WHAS the sum of £——, togr with the sum of £—— for intt thron (making the total sum of £——), now remains owing to the borr on the secy of the sd deposit of the bldg agrmt : AND WHAS the mtgee has agrd with the borr to advance to the blder on behalf of the borr the sum of £—— now due to him under the covt to make advances contd in the bldg agrmt upon having the repaymt throf & of every other sum wch may be advanced by the mtgee [or his assns (a)] to the blder [his exs, ads, or assns] to or on acct of the borr [or his assns] with intt at the rate hrinar mentd, seed in mner hrinar appearing ; AND WHAS the blder has agrd to join in this deed as surety for the borr in mner hrinar appareg : AND WHAS the bldg agrmt, togr with the recited memo of deposit throf have this day been deposited with the mtgee to the intent that the equitable mtge or charge created by the sd deposit of the —— day of ——, & the provons in the sd memo contd may enure to the benefit of the mtgee : NOW THIS DEED made in psuance of the sd agrmt, & in conson of the sum of £—— now pd by the mtgee to the blder by the direction of the borr (the receipt & paymt whrof is hby acknowledged), & of the covt by the mtgee hrinar contd for the loan to or on acct of the borr of the further sum of £—— by the instalmts & on the condons hrinar mentd WITNESSETH as follows :—

Wit-
nesseth.

1. The borr & the builder hby jointly & severally covt,

(a) The words in these and the next two square brackets and in clause 2 should be added only if further advances are to be made, see *ante*, p. 16.

continue covt for paymt of psnt & future advances, & intl after default, p. 18, f. 6, & p. 17, f. 2.

2. The mtgee hby covts with the borr that the mtgee will from time to time advance to the blder, on behalf of the borr, such further sum or sums of moy as he may from time to time require for the ppose of carrying out the bldg agrmt [not exceedg (with the sd sum of £—— now advanced) the sum of £—— (b)] by the instalmts, at the times, in the mner, & to the extent provd in the first schdle hto. [PROVD that no advances are to be made under this covt after the death of the mtgee.] PROVD ALWAYS that this seey shl extend to all sums which may be advanced by the mtgee [or his assns (c)] to the blder on acct of the borr although the obligon to make or continue such advances may have ceased or never existed.

Covenant
by mort-
gagee to
make
further
advances.

3. The borr, as **benefl owner**, hby demises (d) unto the mtgee *Parcels, Vol. I.*, p. 480, *by reference to plan with numbered plots; habendum*, p. 24, f. 1, “subjt to but with the benefit of the bldg agrmt, & subjt to the proviso for redmon hrinar contd [subjt as to the plots Nod —— to —— on the sd plan to the leases affecting the same resply mentd in the second pt of the sd second schdle hto, & as to the remr of the sd plots subjt to but with the benefit of the bldg agrmt, & subjt as to all the sd plots to the proviso for redmon hrinar contd].”

Demise.

4. The borr, as **benefl owner**, & with the consent of the blder hby assns unto the mtgee ALL THAT the sd ppal sum of £—— now owing to the borr as afsd on the seey of the sd deposit of the —— day of ——, & the intt now due, & henceforth to become due in respt throf: TOGR with the benefit of the [power of sale & all other] powers & provons contd in the sd memo of deposit includg the benefit of the undertakg by the blder thrin contd for the exon of formal or legal mtges of any lease or leases

Assign-
ment.

(b) These words should be added where the amount of the advances to be made from time to time, in pursuance of the building agreement, depends upon the certificate of the mortgagor's surveyor as to the value of the work done.

(c) See note (a), p. 234.

(d) Or “hby charges by way of legal mtge ALL, &c., with the paymt to the mtgee of the ppal moy intt & other moy hby covtd to be pd by the borr subjt ” as in the text but omitting the proviso for redemption.

grted in psuance of the bldg agrmt for securg the sd ppal moys hby assned & orwise: AND ALL other sees for the same ppal moys & intt To HOLD unto the mtgee subjt to the proviso for redmon hrinar contd.

5. *Proviso for redmon*, p. 26, f. 1, using alternative form in brackets & adding "and reassn the premes hrinbfe assned to the borr."

6. The borr hby covts with the mtgee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Covenant to insure*, p. 40, f. 4, or p. 43, f. 5, PROVD ALWAYS that any insce effected by the blder in accdee with the provons of the bldg agrmt shl on production, &c., continue second proviso in note (b) on p. 42.

[(ii) *Covenant against registron if required*, p. 45, f. 10.]

(iii) *Provision as to primary liability betn mtgor and builder*, p. 35, f. 3.

(iv) *Declaration that builder shall be liable as a ppal debtor*, p. 35, f. 4.

(v) *Clause excludg s. 103 of L. P. Act, 1925*, p. 61, f. 8.

(vi) *Power of attorney to sue for debt due from builder to borr* "and to grt separate leases of the sevl plots of land hby mtged as & when the blder shl become entitled thto psuant to the provons in that behalf contd in the bldg agrmt," p. 69, f. 1.

(vii) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

Agree-
ment by
builder to
execute
legal
mort-
gages.

7. The blder hby covts with the mtgee that he will duly observe & pform the provons, condons, & stipulons contd in the bldg agrmt, & on his pt to be observed & pformed: PROVD ALWAYS that when & so soon as each lease of any plot or plots hby mtged shl be grted to the blder in psuance of the provon in that behalf contd in the bldg agrmt, the blder shl forthwith at the reqt of the mtgee, but at his own cost, demise [charge] the same to the mtgee by way of legal mtge, to be in such form as the mtgee may approve, as a collateral secy for the repaymt of such pt (if any), of the ppal sum then owing on the secy of this deed as shl have been advanced by the mtgee in respt of the premes comprised thrin, & of all intt then due & thrafter to become due in respt throf.

8. The equitable intt or rt of redmon of the blder subjt to any such legal mtge to be exted as afsd in any lease so grted shl immedly upon the exon throf stand charged in favour

of the borr & in substitution as regards the premes comprised in such lease for the charge created by the sd deposit of the — day of —, with the repaymt to the borr of such pt (if any) of the ppal sum then owing on the seey of the sd deposit as shl have been advanced by the borr in respt of the same premes & of all intt then due or thrafter to become due in respt throf.

IN WITNESS, &c.

Two schedules.

TRANSFERS OF MORTGAGES.

PRELIMINARY NOTE.

Effect of L. P. Act. S. 114 (1) of the L. P. Act has simplified the law relating to transfer of mortgages and rendered unnecessary the variations hitherto in use according as the mortgagor was or was not a party and in the former case according as he had or had not encumbered the equity of redemption. Under this sub-section a deed which purports to transfer a mortgage or the benefit of a mortgage, unless a contrary intention is therein contained and subject to any provisions therein contained operates to transfer to the transferee (i) the right to sue for, recover, and give receipts for the mortgage money or the unpaid part thereof and the interest then and to become due, and (ii) the benefit of all the securities for the debt and the benefit of and the right to sue on all the covenants with the mortgagee and the right to exercise all his powers, and (iii) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser but subject to the right of redemption then subsisting.

Sub-s. (2) of the same section includes his personal representatives and assigns in the expression "transferee."

Parties.

In all cases where the original mortgagee is alive and the whole debt is transferred the form in Precedent LXVIII. will be proper to carry out the transaction. The mortgagor should be made a party wherever possible in order to obtain an admission from him of the state of the debt, and where he joins this should be recited, p. 12, ff. 11, 12 and 13.

If the original mortgagee be dead the form of transfer depends on whether or not he died since 1881. If he died since 1881 any mortgaged estate of inheritance or *pur autre vie* in freeholds or copyholds to which the mortgagee had not been admitted vested under the C. Act, 1881, s. 30, whether he died testate or intestate, in his personal representatives. The operation of this section so far as it relates to deaths occurring before the 1st January, 1926, is saved from repeal by the L. P. Act, 1925. Mortgage estates of inheritance existing on the December 31st, 1925, have been converted by the L. P. Act into terms of years absolute and by s. 1 of the Administration of Estates Act, 1925, real estate which is defined by s. 3 (1) of that Act as including real estate held by way of mortgage, vests in the personal representative of the mortgagee notwithstanding any testamentary disposition thereof. The personal representatives can therefore transfer both the debt and all the securities.

As to a transfer by a mortgagee in possession, see *Hall v. Heward*, 32 Ch. D. 430.

If the original mortgage was made to more than one mortgagee the fact of its having been made a joint account should be noticed if any of them have died.

Where the interest is regularly paid and no notice to pay off the principal has been given, a mortgagee who transfers the mortgage without the concurrence of the mortgagor and without calling on transfer payment cannot add the costs to his security: *Re Radcliffe*, 22 Beav. 201.

Stamp.

As to stamps on the mortgage, see Stamp Act, 1891, s. 87, and Schedule "Mortgage"; Alpe 16th ed. 189, 192; *Wale v. I. R. Commrs.*, 4 Ex. D. 270; *Humphrys v. I. R. Commrs.*, 81 L. T. 199, and (as to transfers of

statutory mortgages) L. P. Act, 1925, s. 118 (4). The *ad valorem* duty only is charged on the amount transferred, including interest in arrear, although the consideration for the transfer is of less amount.

If the mortgagor is not willing to join in the transfer inquiry should be made of him before completion as to the amount due on the mortgage and notice of the transfer given to him: *Dixon v. Winch*, [1900] 1 Ch. 736; *Turner v. Smith*, [1901] 1 Ch. 213. As to whether it is necessary to inquire if the full amount stated in the mortgage was in fact paid, see *Bickerton v. Walker*, 31 Ch. D. 151, *ante*, p. 14, note (a); *De Lisle v. Union Bank of Scotland*, [1914] 1 Ch. 22. Enquiries to be made.

Where the original mortgage was registered as a land charge no entry of the transfer is required, since by s. 10 (2) of the L. C. Act, 1925, the charge is registered against the name of the estate owner. A transferee of a puisne mortgage created before 1926 should see that the mortgage is registered as a land charge before completion of the transfer: L. C. Act, 1925, s. 10 (7); and the charge will not be effective unless registered within a year from the first transfer after the 1st of January, 1926: L. C. Act, 1925, s. 14 (2). Registration.

As to s. 96 of the L. P. Act, 1925, making it obligatory on a mortgagee if required to transfer the debt and security to a third person instead of reconveying, see *ante*, p. 25, note.

If the original mortgage was made to trustees, the fact of its having been made on joint account should be noticed if any of them have died. If the transferees are trustees, the fact of the loan being a joint account will be stated as in an original mortgage: see p. 14, f. 1, with variation in note (b). For a form of transfer on an appointment of new trustee, see Precedent LXXII, *post*, p. 243. Transfer on appointment of new trustees.

The operation of s. 115 (2) of the L. P. Act, 1925, which gives to a statutory receipt the effect of a transfer by deed in cases where the money is paid by a person not entitled to the immediate equity of redemption is discussed, *post*, p. 253, note (d). Transfer by receipt.

LXVIII.

FORM OF TRANSFER of MORTGAGE under s. 114 of the L. P. Act, 1925 (a), VARIATION where the MORTGAGEE joins (b).

THIS TRANSFER OF MORTGAGE made the — day of —, BETN A., *mtgee*, of the one pt, & B., *transferee*, of — of the other pt suppl to a mtge dated — & made betn, &c., [*& to a fur charge dated —, & made betn, &c.*] affectg, &c., *here state short particulars of the mtged ppty* WITNESSETH that in conson of the sums of £— & £— (for intt), now pd by B. to A., being the resptve amts of the mtge-moy & intt owg in respt of the sd mtge [*& fur charge*] (the rect of which sums A. hby acknowes) A. as *mtgee* hby conveys & transfers to B. the benefit of the sd mtge [*& fur charge*].

IN WITNESS, &c.

LXIX.

DEED OF STATUTORY TRANSFER of MORTGAGE under s. 118 of the L. P. ACT, 1925, MORTGAGOR NOT joining (c).

THIS TRANSFER OF MORTGAGE, made by way of staty transfer the — day of —, BETN A., *mtgee*, of the one pt,

(a) For the effect of a transfer of mortgage under s. 114 of the L. P. Act, 1925 : see *ante*, p. 238.

If the original mortgagee be dead his personal representative will be the party of the first part, see *ante*, p. 238. The will appointing executors at the death of the mortgagee and probate of the will should be recited or the fact that he died intestate and the grant of letters of administration to his estate, “has agreed at the reqt of the sd exor or admor to join in this deed in mnr hrafter appearg.”

(b) Where the mortgagor joins he should be made a party of the second part and the state of the mortgage debt recited as at p. 12, f. 11, adding “as testified by the execon of this deed by the *mtgor*.”

(c) This Precedent and the two which follow are in the forms given in the L. P. Act, 1925, Fourth Schedule, which, in addition to their ordinary operation as implying covenants against incumbrances or for title, as the case may be, and any other clauses under the general provisions of the Act, have also a special operation as defined by ss. 118 and 119. It must be particularly remembered that the forms can only be used where the

As to the statutory forms of transfers of mortgage.

& B., *transferee*, of the other pt, suppl to a legal charge made by way of staty mtge dated the — day of —, & made betn, &c., WITNESSETH, that in conson of the sum of £—, now pd to A. by B. (*d*) (being the aggregate amt of £—, mtge-moy, & £—, intt due in respt of the sd legal charge, of wch sum A. hby acknowes the rect), A., as *mtgee*, hby conveys & transfers to B., the benefit of the sd legal charge.

IN WITNESS, &c. (*e*).

LXX.

DEED of STATUTORY TRANSFER of MORTGAGE under s. 118 of the L. P. ACT, 1925, a COVENANTOR JOINING (*f*).

THIS TRANSFER OF MORTGAGE, made by way of staty transfer the — day of —, BETN A., *mtgee*, of the first pt, B., *covtor*, of the second pt, & C., *transferee*, of the third pt, suppl to a legal charge made by way of staty mtge, dated the — day of —, & made betn, &c., WITNESSETH that in conson of the sum of £—, now pd to A. by C. (*g*), (being the mtge-moy due in respt of the sd legal charge,

original mortgage was a "statutory mortgage" under s. 117 (as to which see *ante*, p. 89), and therefore have only a limited operation; and they apply only to freehold and leasehold land. Each of the three forms operates as a transfer of the mortgage debt and the mortgaged property; the second form also operates as a covenant for payment by the person joining as covenantor, or by each of such persons jointly and severally if more than one; and the third form operates not only as a "statutory transfer," but also as a "statutory mortgage," so as to have effect accordingly under s. 117; but not so as to be liable to any increased stamp duty by reason only of its being designated a mortgage; as to which, see *ante*, p. 238, note. These statutory forms may be varied or added to as circumstances require, see s. 118. The forms are expressed as "supplemental" to the mortgage, but may be varied so as to be made by endorsement. All three forms apply also to the transfer of a statutory mortgage made before the 1st January, 1926, which will then be referred to as a "mortgage" instead of a "legal charge."

(*d*) If the transferees are trustees, say here, "out of moys belongg to them on a joint acct." The other alterations will be merely the substitution of the plural.

(*e*) Notice to be given to the mortgagor.

(*f*) See notes to last Precedent.

(*g*) See *ante*, note (*d*), *supra*, as to the case of a transfer to trustees.

no intt being now due & payable thron, of wch sum A. hby acknowes the rect), A., as mtgee, with the concurrence of B., who joins hrim as covtor, hby conveys & transfers to C. the benefit of the sd legal charge. IN WITNESS, &c. (h).

LXXI.

DEED of STATUTORY TRANSFER and STATUTORY MORTGAGE combined under s. 118 of the L. P. ACT, 1925 (i).

THIS TRANSFER AND LEGAL CHARGE, made by way of staty transfer & mtge the — day of —, BETN A., *mtgee*, of the first pt, B., *mtgor*, of the second pt, & C., *transferee*, of the third pt, suppl to a legal charge made by way of staty mtge dated the — day of —, & made betn, &c.; WHAS a ppal sum of £— only remains due in respt of the sd legal charge as the mtge-moy, & no intt is now due thron; AND WHAS B. is seised in fee simple of the land comprd in the sd legal charge subjt to that charge; NOW THIS DEED WITNESSETH as follows :—

1. In conson of the sum of £— now pd to A. by C. (k), the rect, & paymt of wch sum A. & B. hby resptly acknowledge (l) [and of the fur sum of £— now paid by C. to B. of which sum B. hby acknowledges the receipt] A. as mtgee hby conveys & transfers to C. the benefit of the sd legal charge.

2. For the conson afsd B. [as mtgor and] as benfl owner hby charges by way of legal mtge ALL the premes comprd in the sd legal charge with the paymt to C. on the — day of — of [the sums of £— & £— making together] the sum of £— as the mtge moy with intt thron at the rate of £— p.c. p.a.

IN WITNESS, &c.

(h) Notice to be given to the mortgagor if not a party.

(i) See *ante*, p. 240, note (c).

(k) See *ante*, p. 241, note (d), as to the case of a transfer to trustees.

(l) For a further advance, insert, “ & of the further sum of £— now pd by C. to B., of wch sum B. hby acknowes the rect.”

LXXII.

TRANSFER, *by* ENDORSED or SUPPLEMENTAL DEED, of MORTGAGE on the APPOINTMENT of NEW TRUSTEES of FREEHOLDS, and LEASEHOLDS, the MORTGAGOR NOT being a PARTY (a), where the MORTGAGEES are TRUSTEES. VARIATIONS where there is a CONTINUING TRUSTEE (b).

PARTIES, A. & B., *trustees & mtgees* (hrinar called the mtgees), Parties.
I; C., D., & E., *new trustees & transferees* (hrinar called the

(a) The mortgagor is not usually made a party to a transfer made on the appointment of new trustees. As to the costs of a transfer made in the absence of the mortgagor, see *Re Radcliffe*, 22 Beav. 201, and note, *ante*, p. 238.

Persons dealing in good faith with mortgagees are not concerned with any trust at any time affecting the mortgage money or the income thereof whether or not they have notice of the trust, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage (i) that the mortgagees are entitled to the mortgage money on a joint account, and (ii) that they have power to give valid receipts for the mortgage money and interest, including any arrears, and to release and postpone the priority of the mortgage debt or any part thereof, and to deal with the debt and mortgaged property or any parts thereof respectively: L. P. Act, 1925, s. 113 (1). It is expressly provided by the same sub-section that an investigation of the equitable title to the mortgage debt or of the appointment or discharge of trustees in reference thereto is unnecessary. By sub-section (2) of the same section the above relief is given in the case of mortgages whenever made, but only as regards transactions effected after the 31st December, 1925.

(b) If there is a continuing trustee, the parties will be A., retiring trustee, & B., continuing trustee, 1; B., & C., & D., new trustees, 2; the mortgage debt will be assigned by A. & B. to B., C., & D.; the mortgage terms will be assigned by A. & B. to "B., C., & D." The covenants for title will be entered into between A. and B. with B., C., and D.: see L. P. Act, 1925, s. 82; A. and B. covenanting "as mtgees." The T. Act, 1925, s. 40, enabling the trust estate to be transferred on an appointment of new trustees either by implication (sub-s. (1) (b)): or by the declaration of the appointor, does not apply to legal mortgages except in the case of land conveyed for securing debentures or debenture stock, see Vol. I., p. 125. See the Precedent of an appointment of a new trustee, where the trust funds are invested on mortgage, in Vol. I., p. 135.

This form may, with slight modification, be adapted to the case of a transfer to a beneficiary becoming entitled under a settlement or will.

Where an existing mortgage is settled on marriage it will be transferred to the trustees of the settlement by an independent deed (see *sub-tit.* Settlements (Personal), *post*, which discloses the trusts and contains a power to appoint new trustees. In such a case a transfer on the appointment of

Notice of trusts affecting mortgage debts.

Variations for continuing trustee.

Recitals. transferees), 2: *Recite (c) state of mtge debt*, p. 12, f. 11: AND WHAS the transferees have become jointly entitled in equity (d) to the sd ppal sum of £—— & the intt now due & henceforth to become due for the same: AND WHAS the mtgees have agrd, at the reqt of the transferee to exte such transfer of the sd ppal sum of £—— & intt & the secs for the same as is hrinar contd. *The operative clause will be similar to those in Prec. LXVIII., p. 240, with the variations for an endorsed or suppl deed indicated at p. 222, note, & except that the conson will be, “in conson of the premes.”* IN WITNESS, &c. (e).

new trustees may conveniently be made “suppl to a settlement (hrinar called the ppal deed), dated, &c., & made, &c., whby in conson of the marre since solemnised betn H. & W. the ppal sum of £—— seed by the mtge of, &c., thrin mentd, & the intt, &c., & the secs for the same were transferred to the sd A., B., & X. upon the terms thrin mentd, & the power of apptg new trees thof was thby vested in the sd H. & W.” *Recite death of X., state of mortgage debt, desires of A. & B. to retire, desire to appoint C., D., & E., new trustees, agreement to transfer mortgage. The operative clause will be the appointment of C., D., & E. as trustees in the place of A., B., & X. (See Vol. I., p. 129). The second remaining clauses will be as in the text.*

(c) For variations for a supplemental deed, see *ante*, p. 222, note.

(d) See *ante*, p. 243, note (a).

Stamp.

(e) The stamp on the transfer of a mortgage on the appointment of new trustees is limited to ten shillings; see Stamp Act, 1891, s. 62. The fact that the deed only bears a ten shilling stamp, whether adjudicated or not, is not notice of a trust: L. P. Act, 1925, s. 112. As to the stamp on a transfer for effectuating the retirement of a trustee where no new trustee is appointed, see Fin. Act, 1902, s. 9.

Notice must be given to the mortgagor; see *ante*, p. 239, note.

LXXIII.

TRANSFER of MORTGAGE of FREEHOLDS by TRUSTEES of BUILDING SOCIETY (a).

PARTIES, A., B., & C., *trees of building society* (hrinar called the trees), 1; D., *mtgor* (hrinar called the borr), 2; K., *transferee* (hrinar called the transferee), 3. *Recite mtge to trees for secg subscriptions, &c., accdg to the rules*; AND WHAS the sum required to redeem the sd hds & premes from the recited mtge is £—— & no more; AND WHAS the transferee at the request of the borr has agrd to pay to the trees the sd sum of £—— upon having a transfer of the sd mtge debt & intt thron & the secs for the same in mner hrinar expressed.

Parties.
Recitals.

NOW THIS DEED made in psuance of the sd agrmt & in conson of the sum of £—— pd by the transferee to the trees at the request of the borr (the receipt & paymt whrof in mner afsd is hby acknowledged) WITNESSETH as follows:—

Wit-
nesseth.
Assign-
ment of
mortgage
debt.

1. The trees at the request of the borr & as trees hby assn unto the transferee the sd sum of £—— to wch the sd Socy is entitled as redmon moy as afsd, & all intt henceforth to become due for the same, & the benefit of all secs for the same, To HOLD UNTO the transferee absolutely.

2. The trees at the request of the borr & as trees hby assn, & the borr as **benefl owner** hby demises & confirms, unto the transferee ALL & SINGR the ppty comprised in the recited mtge To HOLD UNTO the transferee for all the residue now unexpired of the term subsistg under the sd mtge, discharged from all rt or equity of redmon now subsistg thrin under the recited mtge, but subj to the proviso for redmon hrinar contd.

Assign-
ment.

3. *Proviso for redmon*, p. 24, f. 1, *mutatis mutandis*.

4. The borr hby covts with the transferee AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

(i), (ii), (iii), &c., as in *Prec. I.*, p. 83, saying, instead of “*mtgee*,” “*transferee*.”

IN WITNESS, &c.

(a) See *Prec. XXV.*, ante, p. 131, and note thereto. As the original mortgage would usually be to secure payment of monthly contributions, or instalments composed of principal and interest, fines and fees, according to the rules of the society, and this transfer operates to convert it into a mortgage of the ordinary type, a covenant for payment of principal and interest and other provisions to adapt it to the altered circumstances are inserted: see ante, p. 134, note (c).

LXXIV.

TRANSFER of PART of MORTGAGE DEBT effected by
DECLARATION OF TRUST. Part transferred to be
POSTPONED to part retained by MORTGAGEE (b).

Recitals. *PARTIES*, B., *mtgee*, 1; K., *transferee*, 2. *Recite mtge*, p. 9, f. 12; *state of mtge debt*, p. 12, f. 11, or p. 12, f. 12. AND WHAS the sd K. has agrd to pay the sum of £—— to the sd B. upon havg paymt throf with intt seed in mner hrinar appearg.

NOW THIS DEED made in psuance of the sd agrmt & *conson & receipt* WITNESSETH as follows:—

Wit-
nesseth.
Declara-
tion of
trust.

1. The sd B., as *tree*, hby declares that he will stand possed of the sum of £——, pt of the sd ppal sum of £—— owing on the secs hrinbfe mentd with all intt henceforth to become due for the sd sum of £——, in trust for the sd K.

Sum as-
signed to
be post-
poned

2. The sd sum of £—— & the intt thron shl be postponed in order of priority of charge to the sum of £——, the remain-
ing portion of the sd sum of £——, and the intt thron.

Rights,
remedies,
&c., as to
whole
sum to
remain
in mort-
gagee.

3. The rt of receivg & givg discharges for the pchase-moy of any premes sold under the sd mtge, & also the rt of enforeg by action, foreclosure, or other proceeding, the paymt of the sd mtge debt of £——, & every or any pt throf, & the intt for the same & generally all rts, remedies, & powers under the sd mtge secy, or in relation thto, shl be solely vested in the sd B., it being intd that the rt of the sd K. to the sd sum of £—— shl not confer upon him the character & rts or remedies of a mtgee, or in any mner nterfere with or lessen the rts, remedies or powers of the sd B., against, over, or in relation to the sd mtged premes, or the pson or psons liable to pay the sd mtge debt or any of them.

Provision
as to
transfer
of part
of debt
retained.

4. The sd B. shl be at liberty to transfer the sd mtge debt of £——, & the secs for the same, as & when he shl think fit, subjt to the condon that he shl give notice to the transferee or

(b) As to a transfer of part of a mortgage debt, see 2 Dav. Prec., 4th ed., pt. 2, p. 808, note, and *ante*, p. 69. Unless the sums are to have no priority a submortgage is preferable to this deed: see Prec. LXVI., *ante*, p. 230. Instead of the provision for postponement there might be a provision that “the sd respective sums of £—— & £——, & the intt thron resply shl be payable rateably, & witht any preferce or priority one over the other.”

transferees of the trust hby declared concerning the sd sum of £——, & the intt thron, & shl also give notice of such transfer to the sd K., or send such notice to his residence or place of business in England, & so that the transferee or transferees shl succeed to the powers (including the power now being conferred) and rts of the pson or psons making such transfers.

5. The sd K. shl have no rt to require the sd mtge to be called in or orwise to interfere as to the time or mode of realising the secs or any of them, or getting in or receivg the mtge moy, all which matters shl remain wholly in the discron of the sd B.

6. The sd B. shl not be liable for any involuntary losses wch may be incurred in or about any such matters or orwise in relation to the premes, or be by any means deprived of the benefit of the stipulons brinbfe contd as to the respective order of priority of the sd sums of £—— & £——, & the sd sum of £——, & the intt thron, shl not constitute a debt from the sd B., & shl only be recoverable from him out of the surplus (if any) of the moys recovered by him in respt of the sd mtge wch shl remain after paymt of his costs, charges & expses, & satisfson of the sd sum of £—— & the intt thron.

IN WITNESS, &c. (a).

Mort-
gagee
to have
entire
discre-
tion as
to calling
in mort-
gage
debt, &c.
Mort-
gagee's
indem-
nity.

LXXV.

CONSOLIDATION (b) DEED, *where the ORIGINAL MORTGAGOR is DEAD, and a FURTHER ADVANCE is made to his EXECUTORS. SHORT FORM by reference to SCHEDULES.*

THIS CONSOLIDATION DEED made, &c., A. & B. (hrinar called the exors), 1; C., *mtgee* (hrinar called the *mtgee*), 2;

(a) Notice of the deed should be endorsed on the mortgage.

(b) Where a surety has concurred in a mortgage both by pledging his personal credit and also by mortgaging his lands or other property, the effect of a deed consolidating that and other mortgages, with a fresh covenant to pay the whole amount of the mortgage debts at a later date, is not only to discharge the surety from his personal liability: *Bolton v. Buckenham*, [1891] 1 Q. B. 278, but also to release the property which he had pledged or charged: *Bolton v. Salmon*, [1891] 2 Ch. 48; unless the original mortgage contains the usual provisions to the contrary: see *ante*, p. 35, f. 6.

Effect of
consoli-
dation on
surety-
ship.

The *ad valorem* stamp will be 2s. 6d. per cent. on the further advance: Stamp Act, 1891, s. 87 (3). Stamp.

Consider-
ation. in conson of the sevl sums the amts whrof are specified in the first column of the first schdle hto being resply owing by the este of X, deced on the sevl mtges resply made by the sevl mtges, the dates whrof & pties whto are specified in the second column of the same schdle, of the ppty now in mtge to the exs as exs of the will of the sd X. weh was proved by the exs on the — day of — in the — Registry, the parlars of weh ppty are contd in the second schdle hto, & in conson of the mtgee havg this day at the reqt of the exs pd to the sevl psons previously entitled to such mtge debts resply the amts throf resply, & havg taken transfers of such mtge debts & of the secs for the same resply by the sevl transfers, the dates whrof & pties whto are specified in the third column of the sd first schdle hto & in conson of the sum of £—— havg been pd by the mtgee to the exs for the pposes of the este of the sd X. deced & the due admon throf, the paymt & rect, &c., *as in last Prec.* WITNESSETH as follows :—

Wit-
nesseth.

1. and 2. as in Prec. XXXII., p. 152.

That
property
shall be
security
for aggre-
gate sum.

3. The sd ppty mentd & comprised in the sd second schdle hto & all other (if any) the ppty comprised in the sd sevl mtges and transfers specified in the second & third columns of the first schdle hto or any of them shl be a secy for the paymt to the mtgee of as well the sd sum of £—— upon the exon hrof pd to the exs as afsd, as also of the sd sevl sums of moy the amts whrof are resply specified in the first column of the sd first schdle hto (makg togr the sd sum of £——) & the intt on such sums resply, & that the same ppty shl not be in any wise redeemed or redeemable but on paymt to the mtgee of the whole of the sd aggregate ppal sum of £—— & intt.

Proviso
for re-
demp-
tion.

Mort-
gagee's
remedies
to be
cumula-
tive.

4. *Proviso for redmon*, p. 24, f. 1, *on paymt by* “the exors or the person or persons for the time being constitutg the este owner in rspt of the fee simple of the sd ppty (c).”

5. AND IT IS HBY AGRD & DECLARED AS FOLLOWS (d) :—

(i) *As in clause 5, Prec. XXXII.*, p. 153.

(c) As to the receipt for payment off of the mortgage operating as a transfer, see L. P. Act, 1925, s. 115 (2) (b).

(d) If the executors are beneficially interested, the deed should contain a covenant for payment and other usual mortgage provisions instead of those contained in Prec. XXXII.

The powers of personal representatives over personal estate, which include a power to mortgage it, can be exercised over real estate : see *ante*, p. 151, note.

(ii) The remedies of the mtgee under the sd sevl mtge secs mentd in the first schdle hto & this deed shl be cumulative & not mutually restrictive.

IN WITNESS, &c.

Two Schedules.

LXXVI.

CONSOLIDATING MORTGAGE *effected to secure* ORIGINAL MORTGAGE *transferred by* RECEIPT (a) *and* FURTHER ADVANCE *by the* TRANSFEEE.

PARTIES, A., *mtgor* (hrinar called the borr *defined as in* *Prec. I.*, p. 83), 1; B. (hrinar called the transferee), 2. *WHAS* the borr is the este owner in respt of the fee simple [term demised by a lease, dated, &c., & made, &c.] subjt to a mtge dated, &c., & made, &c., for securg the ppal sum of £—— with intt thron. *AND WHAS* by a receipt dated, &c., & signed by the sd *original mtgee or transferor* for the ppal sum of £—— & £—— intt thron pd by the transferee the benefit of & all the secy for the sd mtge was transferred to the transferee. *AND WHAS* the transferee has agreed to advance to the borr the sum of £—— *fur advance* upon having repaymt of the aggregate ppal sum of £—— with intt at the rate hrinar mentd secured in mner hrinar appearg: *NOW THIS DEED* made in psuance of the sd agrmt & in conson of the sum of £—— *total aggregate sum* previously to & on the execon hrof pd at the reqt of the borr by the transferee in mner following, namely, the sum of £—— *original debt & intt* to the sd *original mtgee or tranferee* & the sum of £—— *fur advance* to the borr (the paymt & receipt of which sd sums of £—— & £—— makg together the aggregate sum of £—— the borr hby acknowes) *WITNESSETH* as follows:—

1. *Covenant for paymt of aggregate ppal sum & intt intt after default*, p. 15, f. 1, & p. 17, f. 2.

2. The borr as benefl owner hby demises & confirms (b) unto the transferee *Parcels by reference to Schedule To* *HOLD* the same for all the residue now unexpired of the term subsistg

(a) See L. P. Act, 1925, s. 115, and *post*, p. 253, note (d).

(b) “hby charges by way of legal mtge *ALL*, &c., with the paymt to the transferee of the ppal moy intt & other moy hby covtd to be pd by the borr to the transferee subjt, &c.,” omitting the proviso for redemption.

under the sd mtge subj't to the seey for the mtge debt transferred as afsd to the transferee, & so that the sd seey including the pwr of sale applicable thrt'o shl continue on foot for the benefit of the transferee & for securg to him the whole of the ppal sum of £—— hby secured & intt thron, & so that the sd ppty shl be subj't to the proviso for redmon hrinar contd.

3. *Proviso for redmon*, p. 24, f. 1.

4. The borr hby covts with the transferee AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

(i), (ii), (iii), &c., as in *Prec. I.*, p. 83, or *Prec. IV.*, p. 87.

IN WITNESS, &c.

Schedule.

LXXVII.

TRANSFER of MORTGAGE of FREEHOLDS settled subject thereto to the TENANT FOR LIFE (a) so as to keep the SECURITY on foot for his BENEFIT, PART of the property having already been RECONVEYED.

Recitals. THIS TRANSFER OF MORTGAGE made A., *mtgee*, 1 ; B., *tenant for life*, 2 ; *Recite mtge*, p. 9 ; *settlmt of freehds subj't to mtge under wch B. is tenant for life*, Vol. I., p. 449 : *reconvee of pt of the ppty* ; *state of mtge debt, all intt being paid*, p. 12, f. 11 : AND WHAS the sd B. is desirous of paying off the sd mtge debt, & of havg the same assned to him so as to keep the same on foot as a subsistg charge on the ppty remaing subj't thto, & the sd A. has at his reqt agrd to accept paymt of the sd ppal sum & to exte such transfer acedly : NOW THIS DEED made in psuance of the sd agrmt, *conson & receipt*, WITNESSETH as follows : —

Wit-
nesseth.
Assign-
ment of
mortgage
debt.

1. The sd A. as *mtgee* hby assns & transfers unto the sd B., THE SD ppal sum of £——, with the intt henceforth to accrue

(a) The right of a tenant for life or other limited owner to require a mortgage of the legal estate to be kept alive for his own benefit on its discharge by him is preserved by s. 116 of the L. P. Act, 1925, and by s. 115 (3) any mortgagor who pays off an incumbrance is prohibited from keeping the incumbrance alive to the prejudice of subsequent incumbrancers where there is no right to do so. Unless otherwise expressly provided, a receipt for the mortgage money paid by a tenant for life will operate under s. 115 (2) to transfer to him the benefit of the mortgage and the securities comprised therein : see also s. 114. The transaction effected by this Precedent which presupposes that the balance outstanding on the mortgage is entirely paid off could safely be effected by a receipt alone, but the Precedent has been retained for the use of those who prefer the old method of conveyancing.

due thron, & the full benefit of every covt & provon contd in the recited mtge, & all other secs for the same; To HOLD UNTO the sd B., as his own moys, & so that the same shl continue on foot for his benefit as a subsistg charge upon the ppty subjt thto.

2. The sd A., as mtgee, hby assns unto the sd B., ALL & SINGR, the messes, lands, tenemts, ppty, & premes, comprised in & assured by the recited mtge, except such pt or pts throf as were conveyed & released by the recited reconvee of the — day of —, AND (by way of convce & not of exception) ALL other (if any) the ppty now remaining vested in the sd A., subjt to redmon under or by virtue of the recited mtge, To HOLD UNTO the sd B. for all the residue now unexpired of the term subsistg under the sd mtge subjt to the right of redmon subsistg in the same premes upon paymt of the sd sum of £— & the intt therefor. IN WITNESS, &c.

Assign-
ment of
mortgage
term.

LXXVIII.

TRANSFER *under HAND only of an* EQUITABLE MORTGAGE *created by* DEPOSIT of DEEDS and AGREEMENT (a).
A short form by endorsement.

I, the within-named A., *mtgee*, in conson of the sum of £— now pd to me by B., *transferee*, the receipt whrof I hby acknowe, hby assn to the sd B. the within mentd sum of £—, with the intt thron, as from the — day of — last, & henceforth to become due, TOGR WITH the within mentd deeds & writgs, AND WITH the benefit of the charge & undertakg by the within-named C., *mtgor*, in the within-written memorandum contd: AND I undertake that I, my exs or ads, will, if required, exte & deliver to the sd B., his exs, ads, or assns, at his or their cost, a formal & effectual transfer by deed of the sd ppal sum & intt, & the secs for the same, in such form & with such provons as may be reasonably required. AS WITNESS my hand this — day of —.

(a) See Precedent XLIX., p. 210. Where the original agreement was not under seal, a transfer in this form would probably suffice, but the stamp would be the same as if the transfer were made by deed.



LXXIX.

TRANSFER of REGISTERED BILL OF SALE of CHATTELS, the
MORTGAGOR joining to COVENANT for PAYMENT only (b).

Parties. THIS TRANSFER OF BILL OF SALE made, &c., B.,
mtgee (hrinar called the mtgee), 1; A., mtgor (hrinar called the
Recitals. borr), 2; K., transferee (hrinar called the transferee), 3. WHAS
this transfer is suppl to a bill of sale dated, &c., & made, &c.
(hrinar called the ppal deed); *state of mtge debt*, p. 12, f. 11, or
p. 12, f. 12; *agrmt for transfer*, p. 13, f. 17.

Wit- NOW THIS DEED made in as follows :—
nessesth.

1. *Covt with transferee for paymt of ppal & intt after default*,
p. 15, f. 1, & p. 17, f. 2.

NOW THIS DEED made in psuance of the sd agrmt &
conson & receipt, p. 15, f. 2, *mutatis mutandis*, WITNESSETH
as follows :—

1. *Covt with transferee for paymt of ppal & intt & intt after*
default, p. 15, f. 1, & p. 17, f. 2.

Assign- 2. The mtgee, as mtgee, at the request of the borr hby
ment of assns, *continue assmnt of debt as in Prec. LXXIII.*, p. 245.
debt.

Assign- 3. The mtgee as mtgee, at the request of the borr hby assns (c)
ment of unto the transferee, ALL & SINGR the fixtures, furniture, fittgs,
property. stk-in-trade, goods, chattels, effects & premes comprised in or
now subjt or hrafter to become subjt at law or in equity to
the ppal indre; *habendum subjt to equity of redmon*, p. 24, f. 6.

IN WITNESS, &c.

(b) See note on the Bills of Sale Acts, *ante*, p. 153. A transfer of a bill of sale does not require registration: *Horne v. Hughes*, 6 Q. B. D. 676; *Ex p. Turquand*, 14 Q. B. D. 636, but must not amount to a new bill of sale: *Marshall & Snelgrove, Ltd. v. Gower*, [1923] 1 K. B. 356.

(c) The grantor only covenants for payment, and is not made to join in the assignment of the chattels as a confirming party, lest his so doing should give rise to the contention that the deed is a new bill of sale, so as to be obnoxious to the Bills of Sale Act, 1882.

LXXX.

RECONVEYANCE (*d*) by MORTGAGEE of FREEHOLDS or LEASEHOLDS, by ENDORSEMENT on or ANNEXATION to the Mortgage. VARIATIONS where RECITALS are OMITTED (*e*), where the MORTGAGE comprised FUTURE ADVANCES, and where the MORTGAGEE has NOTICE of SUBSEQUENT INCUMBRANCES.

THIS RECONVEYANCE made, &c., A., *mtgee* (hrinar called Parties. the *mtgee*), 1; B., *mtgor* (hrinar called the *borr*), 2. WHAS

(*d*) The L. P. Act, 1925, has introduced a new and greatly shortened form of reconveyance applicable to all mortgages whether by demise or by charge by way of legal mortgage and including statutory mortgages, irrespective of the date of their creation. After the 31st December, 1925, s. 115 (1) of the Act provides that a receipt for all the money thereby secured endorsed on, written at the foot of, or annexed to a mortgage, or where the mortgage has been followed by further charges so affixed to one of the mortgage deeds, which states the name of the person paying the

Reconveyances under L. P. Act.

(*e*) If there has been a transfer, the reconveyance may be endorsed on the transfer; but if endorsement is not convenient (as it would not usually be unless the parties have the same solicitor), recitals may be saved by making it supplemental or annexed to the mortgage or transfer, as in the case of a further charge, see *ante*, p. 222, note, where the variations required in that case are indicated.

As to endorsing or annexing reconveyance.

If the deed is framed without recitals, it should commence, "WITNESSETH that in conson of all intt on the within mentd sum of £—— havg been pd up to the date of this deed & of the."

Variation where recitals omitted.

Where the mortgage money and costs (see *Webb v. Crosse*, [1912] 1 Ch. 323) have been paid it is the mortgagee's duty to hand the title deeds and a reconveyance to the mortgagor: *Rourke v. Robinson*, [1911] 1 Ch. 480; *Graham v. Seal*, 88 L. J. Ch. 31; and if he refuses, the Court may appoint a master to reconvey on his behalf: *Holme v. Fieldsend*, 55 Sol. J. 552. Until the reconveyance is executed, the mortgagor becomes from the date of payment a tenant at will to the mortgagee; and the legal term of the latter will be extinguished by adverse possession of the mortgagor during the statutory period: *Sands to Thompson*, 22 Ch. D. 614; see *Kibble v. Fairthorne*, [1895] 1 Ch. 219; *Johnson & Sons, Ltd. v. Brock*, [1907] 2 Ch. 533. Cf. *Wakefield & Barnsley Union Bank v. Yates*, [1916] 1 Ch. 452. An act of bankruptcy prevents a mortgagor from making a valid tender of the mortgage debt, and a mortgagee with notice of such an act is not entitled to receive the money and reconvey the property: *Ponsford, &c., Co. v. Union, &c., Bank*, [1906] 2 Ch. 444.

As to the stamp on a reconveyance, see the Stamp Act, 1891, Sched. "MORTGAGE"; or, where part only of the property is reconveyed, see *post*, p. 260, note.

under the provisos of the L. P. Act, 1925, the legal este in fee simple [if mtge was by assnmt say "term of yrs"] assured by the within written mtge has been converted into a legal term of 3,000 yrs from the 1st day of January, 1926 [— yrs less — yrs] subjt to the like rt of redmon.

Recitals. *Recite state of mtge debt, p. 12, f. 11 ; desire to redeem, p. 14, f. 20, [or desire for reconvece, all mtge moys havg been pd off, p. 14, f. 21] (a).* NOW THIS DEED WITNESSETH that
 Wit-
 nesseth.

money and executed by the chargee by way of legal mortgage or by the person in whom the mortgaged property is vested and who is legally entitled to give a receipt, shall operate as a surrender and merger of the mortgage term, or in the case of a charge by way of legal mortgage as a reconveyance to the extent of the interest subject to the mortgage to the person entitled to the equity of redemption. In both cases the mortgaged property is discharged from all principal money and interest secured by the mortgage but without prejudice to the interests of any prior incumbrancer. Where there has been a further charge the receipt should refer either to all the mortgage deeds or to the aggregate amount of money secured by them: sub-s. (7). Where it appears from the receipt that the money was paid by a person not entitled to the immediate equity of redemption the receipt operates as a transfer by deed to that person unless (i) it is expressly otherwise provided, or (ii) the mortgage is paid off out of capital money or other money in the hands of a personal representative or trustee and properly so applicable, and it is not expressly provided that the receipt should operate on a transfer: sub-s. (2). The same covenants for title are implied in a receipt under this section as though the person executing it had by deed reconveyed the property as mortgagee subject to any interest paramount to the mortgage: sub-s. (6). The expression "mortgaged premises" is defined by sub-s. (11) as the property remaining subject to the mortgage at the date of the receipt. The receipt may be in the form set out in the Third Schedule of the Act, see Prec. LXXXI, *post*, p. 255, with such variations and additions, if any, as may seem expedient, and where it is intended to take effect under s. 115 must bear the same stamp as if it were a reconveyance by deed: sub-s. (5). The right of the person paying off the mortgage to demand a reassignment, surrender, or transfer in lieu of a receipt is preserved by sub-s. (4). The section does not apply to the discharge of charges on land registered under the L. R. Act, 1925: sub-s. (10).

It would appear from the foregoing that, except in cases where a part only of the debt is paid off, formal reconveyances are no longer necessary but the Precedents in the text are retained in view of the option given by sub-s. (4) to mortgagors and others to demand them. See, further, *ante*, p. 5.

As to formal reconveyances, see 2 Dav. Prec., 4th ed., pt. 2, pp. 276 *et seq.*; Elph. Introd., 7th ed., 285, and reconveyances by building societies, *ante*, p. 132, note.

(a) Where the mortgage comprises future advances or where interest is or may be accumulated, or where mortgagee's costs are charged, for the purpose of ascertaining the *ad valorem* duty on the reconveyance, which is

in conson of all intt on the sd sum of £—— havg been pd as afsd, & of the sum of £—— now pd by the borr to the mtgee, the rect whrof is hby acknowledged as being in full discharge of all ppal moys & intt seed by or now owing under the within-written indre, [or, if the repaymt of the mtge moy is recited, the conson shd be as at p. 15, f. 6, or “in conson of the premes”], the mtgee as mtgee hby surrenders (b) unto the borr, ALL & SINGR the ppty & premes comprised in or assured by the within-written mtge, or wch are now by any means (c) vested in the mtgee subjt to redmon by virtue throf, To THE INTENT that the term subsistg therein under the within written mtge may cease & merge in the reversion immediately expectant thron (b), & so that the sd premes may be discharged from, &c., continue, p. 24, f. 7. IN WITNESS, &c.

Sur-
render.
Parcels.

Haben-
dum.

LXXXI.

FORM of RECEIPT on DISCHARGE of a MORTGAGE (d).

I, A., of, &c., hby acknowledge that I have this —— day of —— received the sum of £—— representg the [aggregate] [balance remaing owing in respt of the] ppal moy secured by the within [above] written [annexed] mtge [& by a fur

payable on “the total amount or value of the money at any time secured,” a recital, as at p. 13, f. 14, should be added.

(b) Where a tenant for life redeems, the term should be assigned instead of surrendered the habendum being “To hold the same to *the tenant for life* for all the residue now unexpired of the term subsistg under the within written mtge subjt to such rt of redmon as is vested in the este owner for the time being in respt of the fee simple [term subsistg in] of the sd mtged premes,” and see *Pearce v. Morris*, L. R. 5 Ch. 227, and *ante*, p. 250. Where the mortgagee has notice of subsequent incumbrances he must be careful to deliver the title deeds to the incumbrancer having the best right thereto: L. P. Act, 1925, s. 96 (2).

(c) If the mortgage is an old one and there may have been accretions to the property arising from inclosures, &c. say, “or wch are now by means of any inclosure, exchange, allotmt award, or orwise vested, &c.”

(d) The above receipt is a copy of Form 2 in the Third Schedule of the L. P. Act, 1925. If the persons paying are not entitled to the equity of redemption it should be stated that they are paying the money out of a fund applicable to the discharge of the mortgage.

Vari-
ations
where
tenant for
life re-
deems.

Delivery
of deeds
where
notice of
subse-
quent
incum-
brances.

Variation
for accre-
tions.

charge dated, &c., or *orwise as required*] together with all intt & costs the paymt havg been made by C. D. of, &c., & E. F. of, &c.

If C. D. & E. F. are not entitled to the immediate equity of redemption & do not desire the receipt to operate as a transfer, add “& it is hby declared that this receipt shl not operate as a transfer of the within [above] written [annexed] mtge [& fur charge].”

AS WITNESS, &c.

LXXXII.

RECONVEYANCE *by* INDEPENDENT DEED (a) *by several* MORTGAGEES (TRUSTEES) of FREEHOLDS to TENANT FOR LIFE as the ESTATE OWNER of strictly settled land the MORTGAGE being paid off by the TRUSTEES and no TRANSFER being DESIRED and there having been a FURTHER CHARGE and a TRANSFER of the ORIGINAL MORTGAGE. VARIATIONS for PART of the PROPERTY having been SOLD with the CONCURRENCE of the MORTGAGEES, where the PRINCIPAL has been paid off by INSTALMENTS.

Parties. THIS RECONVEYANCE made, &c., between A., B., & C.,
mtgees (hrinar called the mtgees), 1; E. & F., trees of will or
Recitals. settlent (hrinar called the trees), 2; D., tenant for life, 3. Recite
mtge by K. to X., omitting the covt for paymt, p. 9, f. 10; further
charge, Vol. I., p. 447; transfer, Vol. I., p. 448, setting out the
new proviso for redmon (if any), & if any of the transferees have
died, the joint acct clause (if any) (b); recite will of K., settg out

(a) For variations where the tenant for life redeems, and for the precautions to be taken where the mortgagees have notice of subsequent incumbrances, see *ante*, p. 255, note (b). The reconveyance might be endorsed on, or made supplemental to the transfer, see *ante*, pp. 222, 253, notes; in which case the recitals up to and including the transfer would be omitted.

Variations
where
part of
land sold.

(b) Where part of the property has been sold, add, “AND WHAS the sd K., with the privity of the mtgees, in the yr —— sold a portion of the ppty comprised in the sd deeds, of, &c., the mtge, further charge, & transfer, consistg of a piece of land containg —— acres, situate, &c., to Y., & in the yr ——, with the like privity, sold a further portion throf consistg of, &c., to Z., & on the

the devise of the equity of redmon in strict settlmt, E. & F. being the trees, & if K. died after 1897, the apptmt of exs; death & probate, Vol. I., p. 458, [or recite strict settlmt by deed, E. & F. being the trees] AND WHAS by a vesting assent [deed] dated & made, &c., the ppty hby reconveyed was togr with other ppty conveyed to D. in fee simple upon the trusts declared concerning the same by the sd will [settlmt] & the sd E. & F. were declared to be the trustees of the settlmt thereby created for the purposes of the S. L. Act, 1925, *Or if K. died after 1897 & before 1926 recite assent or convce by exs of K. (c); state of mtge debt, p. 12, f. 11, with variation in note (e):* AND WHAS the trees have agrd to pay off & discharge the sd mtge debt out of moys in their hands as trees of the sd will, or, "settlmt," applicable for that ppose, & have reqtd the mtgees to release & reconvey the sd ppty in mner hrinar appearg: NOW THIS DEED WITNESSETH that in conson of the sum of £—— now pd by the trees out of moys in their hands as such trees as afsd, to the mtgees, in full discharge of all ppal moys & intt owing on the secy of the recited deeds of, &c., the

Wit-
nesseth.

complon of the sd sevl sales the mtgees joined in the sevl convces of the same lands & ppty to the respective pchasers throf, but the pchase moys payable for the same were received by the sd K., except as to £——, wch was pd to & received by the mtgees, in pt discharge of the ppal sum of £—— seed by the sd deeds of, &c., *the mtge, further charge, & transfer, whby the same was reduced to £——.*"

(c) Where the principal has been paid off by instalments, continue from here as follows:—"AND WHAS the trees, out of moys in their hands as trees of the sd will [settlmt] applicable for that ppose have pd to the mtgees the sevl sums of £—— & £—— on the —— day of ——, & the —— day of ——, in pt discharge of the sd mtge debt, & have pd to the mtgees the sum of £——, the balance throf, on the exon of this deed, And all intt on the ppal moys for the time being owing on the secy of the sd deeds of, &c., *the mtge, further charge, & transfer*, up to the date of this deed, has been fully pd, as they, the mtgees, hby acknowe: AND WHAS the mtgees have agrd, at the rqt of the trees, to exte such release & reconvey as is hrinar contd: NOW THIS DEED WITNESSETH, that in psuance of the sd agrmt, & in conson of all ppal moys & intt seed by the recited deeds of, &c., *the mtge, fur charge, & transfer*, havg been fully pd & satisfied in mner afsd, &c."

Variation
where
money
paid by
instal-
ments.

Release. *mtge, further charge, & transfer* or any of them (the rect whrof the mtgees hby acknowe) they the mtgees, as **mtgees**, hby resply surrender & release unto the sd D., ALL & SINGER the ppty comprised in or assured by the recited deed of, &c., *the transfer (a)*, or wch is now by any means vested in the mtgees, or any of them, subjt to redmon under or by

Habendum. virtue of the sd deeds of, &c., *the mtge, further charge, & transfer*, or any of them, To THE INTENT THAT the term subsistg thrin under the sd mtge may cease & merge in the reversion immedtly expectant thron & so that the transaction hby effected shl not operate as a transfer of the secies subsistg under the sd deeds or any of them (b) & so that the sd premes shl be discharged from, &c., *continue*, p. 24, f. 7. IN WITNESS, &c.

LXXXIII.

RECONVEYANCE *on behalf of LUNATIC MORTGAGEE (c).*

Parties. THIS RECONVEYANCE made, &c., A., the duly appted committee [*in the case of a lunatic not so found by inquisition, say, "the pson appted to exercise the powers of a committee"*] of the este of L., a pson of unsound mind, & the pson appted to convey as hrinar mentd, 1 ; B., *mtgor* (hrinar called the borr), 2.

Recitals. *Recite the mtge*, p. 9, f. 10 ; *recite conversion of fee simple into term of years as in Prec. LXXX.*, p. 253 ; *state of mtge debt, some intt being due*, p. 12, f. 12 ; AND WHAS the borr is desirous of paying off the sd sum. of £—— AND WHAS by an order made in the matter of L., a pson of unsound mind [*not so found by inquisition*], & in other matters & dated the —— day of —— it

Variation
where
part of
land sold.

(a) If part of the property has been sold, add, "save & except such pts throf as have been sold & conveyed to the respective pchasers throf, as hrinbf mentd, & (by way of convce & not of exception), all other (if any) the hds wch are now, &c."

(b) See note (d), *ante* p. 253.

(c) In the case of a reconveyance the lunatic mortgagee does not reconvey by his committee, but the committee conveys as the person appointed by the judge to convey under the Lunacy Act, 1890, s. 135 (4). The jurisdiction to make a vesting order under that section in the case of a lunatic mortgagee beneficially entitled to the mortgage debt remains with the judge in Lunacy unless the mortgage money has been paid off. See Lunacy Act, 1911, s. 1 and Lunacy Act, 1922, s. 2.

was ordered that on the borrr paying into Court to the credit of L., a pson of unsound mind [not so found by inquisition], the sd ppal sum of £——, & paying to the sd A. as such committee as afsd [or, to the sd S.] all intt due on the sd ppal sum of £—— secd by the recited mtge, the sd A. shd in the place of the sd L. convey to the borrr, or as he shd direct, the ppty comprised in the recited mtge for the este vested in the sd L. as mtgee thrin, discharged from he ppal moy & intt thby secd, & that such reconvce shd be settled & approved by the Master in Lunacy; AND WHAS the borrr on the —— day of —— pd into Court the sd sum of £—— to the credit of “A., a pson of unsound mind,” &c., *add reference to account; approval of master, p. 154, saying, for “mtge,” “reconvce.”* NOW THIS DEED WITNESSETH that in psuance of the sd order & in conson of the sum of £——, *arrears of intt*, now pd by the borrr to the sd A., the receipt whrof the sd A. hby acknowes, & in conson of the sum of £—— so pd into Court as afsd the sd A. under the recited order of the Court hby surrenders & releases unto the borrr ALL & SINGR the premes comprised in or assured by the recited mtge, &c., *continue as in Prec. LXXX.*, p. 255.

Wit-
nessest.

Release.

IN WITNESS, &c.

LXXXIV.

RECEIPT *on DISCHARGE of STATUTORY MORTGAGE of FREEHOLDS or LEASEHOLDS under s. 120 of the L. P. Act, 1925 (a).*

I, A. B. of —— hby acknowe that I have this —— day of —— 19—— received the sum of £—— representg the [aggregate] [balance remaing owing in respt of the] mtge moy

(a) This is the form of discharge in the fourth schedule to the L. P. Act, 1925, and should only be used where the statutory form of mortgage in that schedule, see *ante*, p. 89, has been used. The form may by s. 120 of the above-mentioned Act be varied or added to as circumstances may require. If the persons paying are not entitled to the equity of redemption the receipt should state that they are paying the money out of a fund applicable to the discharge of the statutory mortgage.

seed by the [annexed] within [above] written statutory legal charge [or statutory legal mtge] [& by the fur statutory charge dated, &c., or *orwise as required*] togr with all intt & costs the paymt havg been made by C. D. of — & E. F. of —. AS WITNESS, &c.

LXXXV.

RECONVEYANCE of PART (b) of PROPERTY in MORTGAGE on PART PAYMENT of DEBT, the property consisting of a LIFE INTEREST in REALTY, and SEVERAL POLICIES on the MORTGAGOR'S LIFE (c).

Recitals. THIS RECONVEYANCE made, &c., A. & B., *mtgees* (hrinar called the *mtgees*), 1; C., *mtgor* (hrinar called the *borr*), 2. *Recite mtge of life intt in realty, & pols on his life, & further charge*, Vol. I., pp. 446, 447: AND WHAS under & by virtue of s. 39 of the L. P. Act, 1925, the legal este so vested in the *mtgees* subj to redmon as afsd has been converted into a correspondg equitable intt in the same premes subj to the like rt of redmon, AND WHAS the sum of £—— has since the exon of the sd fur charge been pd by the *borr* to the *mtgees*, in pt discharge of the sd aggregate *mtge* debt of £——, & there remains the ppal sum of £—— togr with intt thron from the —— day of —— last owing on the seey of the recited *mtge* & further charge, AND WHAS the *mtgees*, at the reqt of the *borr*, & in conson of the sum of £—— havg been pd in reduction of the sd *mtge* debt as afsd, have agrd to exte such release & re-assnmt of pt of the premes comprised in the recited *mtge* & further charge as is hrinar contd, NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows:—

Wit-
nesseth.
Release.

1. The *mtgees*, as *mtgees*, hby assn & release unto the *borr*, First, ALL THAT the life intt of the *borr* in the premes set out in the Schedule hereto, And Secondly, ALL THAT *parcels* for

(b) A reconveyance of part of the mortgaged property upon part payment of the mortgage debt cannot be effected by receipt: see *ante*, p. 253, note (d).

Stamp. (c) The stamp on a reconveyance of part of the property in mortgage is 10s., see Vol. I., sub-tit. Conveyance on Sale, note, except where the *ad valorem* duty on the whole would be less than 10s., in which case such less duty only is charged in practice.

Policy as in Prec. XVI., p. 111, To HOLD the same unto the borr discharged, &c., continue, p. 24, f. 7.

2. PROVD ALWAYS that nothing hrim contd shl prejudice or affect the seey of the mtgees under the recited mtge & further charge upon intt of the borr in the ppty, pols, & premes remaing subjt thto for the paymt of the ppal moys remaing owing to them as afsd & the intt thron.

IN WITNESS, &c.

The Schedule above referred to.

LXXXVI.

RECONVEYANCE *by* MORTGAGEE *of* PERSONALTY (a).

- PARTIES, A., *mtgee* (hrrinar called the mtgee), 1; B., *mtgor* (hrrinar called the borr), 2.

Recite the mtge, omitting covenant for paymt; state of mtge debt, p. 12, f. 11, desire to redeem, p. 14, f. 20, or desire for reconveyance, p. 14, f. 21.

NOW THIS DEED made in *conson & receipt as in Prec. LXXX., p. 254, WITNESSETH* that the mtgee, as mtgee, hby assns & releases unto the borr ALL & SINGR the — & premes comprised in or assned or grted by the recited mtge, or wch are now by any means vested in the mtgee subjt to redmon by virtue throf To HOLD UNTO the borr discharged, &c., *continue* p. 24, f. 17.

IN WITNESS, &c.

LXXXVII.

ENDORSED RECEIPT *on* DISCHARGE *of* EQUITABLE MORTGAGE (b).

I, the within named A., *mtgee*, hby acknowe that I have this day received from the within named B., *mtgor*, the sum of

(a) If a charging order has been obtained by the mortgagee or a *distringas* placed by him on the fund it will, of course, be discharged or withdrawn on payment of the mortgage debt and interest: see R. S. C., 1883, Order 46.

(b) It is conceived that a mere receipt in this form is sufficient to discharge an equitable mortgage of any property, whatever may be its form. The receipt does not require a receipt stamp: *Firth & Sons, Ltd. v. J. R.*

Security
not to be
affected.

Recitals.

Wit-
nesseth.
Assign-
ment.

Receipt
of equit-

£—— being the full amt of all ppal moys, & intt, seed by the within written memorandum [deed]: As WITNESS my hand, this —— day of ——.

LXXXVIII.

APPOINTMENT of RECEIVER CONTEMPORANEOUSLY *with* *the MORTGAGE (c).*

THIS DEED OF APPOINTMENT made, &c., BETWEEN A.,
 Recitals. *mtgor* (hrinar called the *borr defined as in the mtge*), 1; B., *mtgee*
 (hrinar called the *mtgee defined as in the mtge*), 2; K., *recer*, 3.
Recite mtge of even date, p. 9, f. 10, noticing any provons such as
 the provision for reduction of intt on punctual paymt affectg the rate
 or time of paymt of the intt, & any provons for keepg up fire or life
 policies, describg the parcels as, “the sevl —— & ppty situate
 in the parishes of ——, & county of ——, the parlars &
 rentals whrof are set forth in the schdle hto”; AND WHAS
 upon the treaty for the mtge effected by the recited mtge it
 was agrd that the sd K. shd be apptd recer of the rents &
 profits of the sd premes, with the powers hrinar given to
 him, & that the deed apptg him such recer shd contain such
 covts & provons as are hrinar contd: NOW THIS DEED made
 in psuance of the recited agrmt, & in conson of the premes
 WITNESSETH as follows:—

Wit-
nesseth.
Appoint-
ment of
receiver.

1. The *borr*, with the concurrence of the *mtgee*, hby appts the
 sd K., *continue recership clauses*, p. 77, f. 1, or *shorter clause*
relying on the statute, p. 82, f. 2.

IN WITNESS, &c.

The Schedule above referred to.

able
mort-
gagee
sufficient.

Commrs., [1904] 2 K. B. 205: unless it applies to “costs,” as it falls within
 the 11th exemption under the head RECEIPT in the schedule to the Stamp
 Act, 1891, see 2 Dav. Prec., 4th ed., pt. 2, p. 278, and p. 302, note; and as
 to the claims by the Inland Revenue authorities, see 47 Sol. J. 445. The
 receipt must not, however, contain any words amounting to a release or
 discharge of the mortgage within the Stamp Act, 1891, Sched. “MORTGAGE,”
 which would make it chargeable as a reconveyance.

(c) See *ante*, p. 77, note.

LXXXIX.

APPOINTMENT *by* MORTGAGEE *of* a RECEIVER *under the*
L. P. ACT, 1925 (a).

THIS DEED OF APPOINTMENT made, &c., BETWEEN A.,
mtgee, 1; B., recer, 2. *Recite the mtge as in last Prec., & the event* Recitals.
whch has made the statutory power exercisable: AND WHAS the sd
A. is desirous of apptg the sd B. to be recer of the rents &
profits of the sd mtged premes; NOW THIS DEED WIT-
NESSETH as follows:—

1. The sd A. by virtue of the power conferred on him by the
statute in that behalf, & of every other power in this behalf
him enablg, hby appts the sd B. to be recer of the rents, profits,
& income of all the ppty comprised in or subj to the recited
mtge.

2. The sd A. hby directs the sd B. to insure & keep insured
against loss or damage by fire out of the moys received by him
all ppty of an insurable nature whch is comprised in or subj to
the recited mtge.

Appoint-
ment of
receiver.

Direction
to re-
ceiver to
insure.

(a) By ss. 101 (1) (iii) and 109 of the L. P. Act, 1925 (which applies to
mortgages by deed executed since 1881: s. 101 (5)), a mortgagee of *any*
property, real or personal, is empowered when the mortgage money has
become due and (unless the contrary is provided in the deed) when the
power of sale has become exercisable (see *ante*, p. 52, note) to appoint any
person he thinks fit receiver; but no person paying money to the receiver
need inquire whether any case has happened to authorise him to act.

Power to
appoint
receiver
under
L. P. Act
1925.

A receiver appointed under the Act is the agent of the person entitled to
the equity of redemption, who is solely responsible for his acts; he can recover
and give receipts for the rents or income over which he is appointed receiver
in the name of either the mortgagee or the person entitled to the equity of
redemption to the full extent of the interest which the mortgagor could dis-
pose of. The receiver is entitled to retain for his remuneration and in satis-
faction of his expenses a commission at such rate, not exceeding 5 per cent.
on the gross moneys received, as is specified in his appointment, or if none
is specified, then at the rate of 5 per cent., or (under the L. P. Act, 1925) at such
rate as the Court may allow. He is also to insure if so directed in writing
by the mortgagee, and if appointed under the L. P. Act, 1925, he may pay for
necessary or proper repairs directed in writing by the mortgagee; see *White*
v. Metcalf, [1903] 2 Ch. 567. The mortgagor cannot distrain on the tenant
without the receiver's authority: *Woolston v. Ross*, [1900] 1 Ch. 789. As to
the position of a receiver, see *ante*, p. 77, note.

Func-
tions and
duties of
receiver.

The appointment under the Act may be by writing not under seal, but it
would usually be by deed.

Commis-
sion
fixed.

3. It is hereby agreed that the commission of the sd B. as such receiver shall be at the rate of £—— p.c. on the gross amt of the moneys received. IN WITNESS, &c.

The Schedule above referred to.

XC.

AGREEMENT (a) under ss. 99 (16) and 100 (10) of the L. P. Act, 1925, extending the STATUTORY POWERS of LEASING and ACCEPTING SURRENDERS. VARIATION for latter power applicable to MORTGAGES executed before 1912 (b).

Parties.

PARTIES, A., mortgagor, 1; B., first mortgagee, 2; C. & D., second mortgagees, 3; supply to a mortgage dated, &c., & made, &c., being a certain other mortgage dated, &c., & made, &c., being a second mortgage by the sd A. to the sd B. of certain property situate, &c., & a mortgage of the same premises by the sd A. to the sd C. & D.; WHEREBY IT IS AGREED that the provisions contained in (b) ss. 99 & 100 of the L. P. Act, 1925, shall henceforth be applicable to the sd mortgages of —— & —— in the same manner as if such mortgages had been executed after the commencement of the sd Act (c), *Or state such powers of leasing & accepting surrenders not being statutory powers as may be required.* IN WITNESS, &c.

Agreement.

(a) See L. P. Act, 1925, ss. 99, 100. The stamp is 10s. These two sections enable a mortgagor by writing not under seal to confer any further or other powers of leasing and accepting surrenders respectively, and are not confined to the statutory powers alone. The agreement must not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement unless he joins in or adopts the agreement.

(b) Where the mortgage was made before 1912 (see L. P. Act, 1925, s. 100 (8)) the power of accepting surrenders conferred by that section on mortgages made after that date may be made applicable by a written agreement to that effect between the mortgagor and mortgagee. The agreement must not prejudice any other mortgagee who does not join in or adopt it.

XCI.

AGREEMENT *between MORTGAGEES and other PERSONS*
interested as to DEPOSIT of TITLE-DEEDS with BANKERS
on behalf of all PARTIES (a).

AN AGRMT made, &c., BETN A. & B., *mtgees*, 1; C. & D., *other pties interested*, 2; E., *mtgor*, 3; WHAS the sevl messes, lands, & ppty wch are shortly described in the first schdle hto have recently been demised by or "by the direction of" the sd E., to the sd A. & B., for the term of — yrs, by way of mtge for securg the sum of £—— & intt: AND WHAS the sevl deeds & munimts specified in the second schdle hto (hrinar called the title deeds) relate not only to the sd ppty described in the sd first schdle hto, but also to other ppty in or to wch the sd C. & D. are intted or entitled & on the treaty for the sd loan it was agrd that the title deeds shd be deposited at the — Bank, & that such agrmts shd be entered into in relation to the same as are hrinar contd, & acedly the title deeds have been deposited at the sd bank in a box marked, &c.: NOW IT IS HBY AGRD betn the pties hto, so far as they are resply authorised or enabled in this behalf, as follows:—

Recitals.
Mort-
gage.

Deeds re-
late to
other
property.

Agree-
ment.

Deeds to
remain at
bankers.

To be
open to
inspec-
tion.

Deeds
may be
removed
for the
purpose
of pro-
duction.

1. The title deeds shl remain in the custody of the sd bank & neither the same, nor any of them, shl be removed or withdrawn from their custody by any of the pties hto or their assns wtht the previous consent in writg of the others or other of the sd pties, or their assns.

2. The title deeds shl at all times be open to the inspection of all or any of the sd pties hto or their assns or their or his respective solors, any of whom shl & may at all times be at liberty to make copies, abstracts, & extracts of or from the same or any of them.

3. If at any time or times hrafter it shl be necy to remove the title deeds or any of them, in order to produce the same unto or for or on behalf of the sd pties hto of the first or second pts, or their respective assns, or to their or any of their counsel, solors, or agents, or in the course of any judicial or other proceedings or orwise on their respective behalf, then,

(a) See also the forms of agreement for similar objects in 2 Dav. Prec., 4th ed., pt. 2, pp. 751, 753.

& in such case such pson or psons as the sd bank shl from time to time appt for that ppose shl at the cost of the pson or psons requiring such production attend with all & every or any of the title deeds & produce the same at such time & place & for such ppose as the pson or psons requiring such production shl by such notice in writg direct or appt.

Interpre-
tation.

4. In these psnts where the context so requires or admits the expression "assigns" in relation to any of the pties hto shl include any pson or psons claiming under or in trust for them or him.

IN WITNESS, &c.

Two schedules.

XCII.

DEED VARYING *the RATE of INTEREST on a MORTGAGE DEBT.*
ENDORSED *on MORTGAGE (b).*

Wit-
nesseeth.

PARTIES, A., mtgee, 1; B., mtgor, 2. Recite state of mtge debt, p. 12, f. 11, or p. 12, ff. 12 or 13. NOW THIS DEED WITNESSETH & it is hby agrd & declared that as from the sd — day of — last, intt at the rate of £— p.c. p.a. (instead of at the rate of £— p.c. p.a. as provd by the within-written mtge) shl be payable for the sd ppal sum of £—, or for so much throf as shl for the time being remain unpaid, & that the within-written mtge shl henceforth operate as if the rate of intt thby reserved had been £— p.c. p.a. instead of £— p.c. p.a., but in all other respts shl remain unaffected by this deed. IN WITNESS, &c.

(b) The manner of altering the terms of a registered charge will be found in L. R. R. 150. As to the power of a tenant for life to vary the rate of interest on a mortgage of settled land, see S. L. Act, 1925, s. 70.

XCIII.

DECLARATION CONVERTING *a* MORTGAGE *for a* TERM of YEARS *subsisting under the* TRANSITIONAL PROVISIONS *of the* L. P. ACT, 1925, *into a* CHARGE *by way of* LEGAL MORTGAGE (*a*).

THIS DECLARATION made by me, A. of, &c., *mtgee*, suppl to the within written mtge: WHAS under & by virtue of the provons of the L. P. Act, 1925, the freehold [leasehold] ppty assured by the within written mtge is now vested in me for a term of 3,000 yrs from the 1st day of January, 1926 [term of — yrs less the last 10 days throf] subj't to the same rt of redmon as is subsistg under the within written mtge. NOW in exercise of the pwr in this behalf vested in me by L. P. Act, 1925, I HBY DECLARE that the within written mtge shl from & after the exon hrof be converted into a charge by way of legal mtge & that the sd term of 3,000 yrs [— yrs less the last 10 days throf] shl be extinguished in the inheritance of [head term subsistg in] the sd ppty. In WITNESS, &c.

XCIV.

UNDERTAKING of MORTGAGOR or his SOLICITOR to pay
Costs in connection with LOAN (*b*).

To Messrs. — (the mortgagees' solors).

Dear Sirs,

In conson of your considering my [client Mr. A.'s] proposal for a loan of £— from your client Mr. B. (to be

(a) This declaration, which need not be by deed, may be made by a mortgagee including trustees and personal representatives whose mortgage in fee simple or for the whole term of a lease has been converted by ss. 85 and 86 of the L. P. Act, 1925: see s. 87 (2) (3) of the Act.

(b) If a loan on mortgage is completed the mortgagee becomes a simple contract creditor of the mortgagor for his costs, but has no charge on the mortgaged property for them: *Wales v. Carr*, [1902] 1 Ch. 860: *Re Foster*, [1920] 3 K. B. 306, at p. 318. As, however, the debt does not arise until completion, it is common to enter into an agreement (often made by a

Costs of
mort-
gagee.

seed on mtge of the M. este) I undertake [personally] to pay the costs, charges, & expenses incurred by Mr. B. in connection with the proposed loan, including the cost of valuation of the ppty (not exceeding £——) & the surveyor's fees, the investigation of the title, & the preparation, execution, stamping, & complon of the mtge, & all other expenses properly incurred by him. This undertaking shl be binding notwithstanding that from any cause whatever the proposed loan shl not be made.

Yrs faithfully.

XCV.

DECLARATION VESTING *the whole ESTATE of the MORTGAGOR in the MORTGAGED PREMISES in a CHARGE* by way of LEGAL MORTGAGE *who has ACQUIRED a TITLE under the LIMITATION ACTS (c).* VARIATION for MORTGAGE of LEASEHOLDS *however created (d).*

THIS DECLARATION made by me, A. of, &c., *mtgee.* Suppl to the within written charge by way of legal mtge :

letter from the mortgagor or his solicitor) that the mortgagor should pay the mortgagee's costs if the loan falls through.

It is the practice to deduct these costs from the advance, though this cannot be done in the case of a bill of sale as it would avoid it: *Ex p. Firth*, 19 Ch. D. 419, unless the payment was not made under an antecedent bargain: *Saunders v. White*, [1901] 1 K. B. at p. 74; and see *London, &c., Co. v. Jones*, [1914] 1 K. B. 147, and see cases collected, *ante*, p. 164.

Occasionally an agreement for the loan is entered into, but as specific performance of such an agreement cannot be obtained: *Rogers v. Challis*, 27 Beav. 175; *Sichel v. Mosenthal*, 30 Beav. 371; *South African Territories v. Wallington*, [1898] A. C. 309 (the latter the case of a company), it is but rare and only made for the purpose of stating any unusual provisions that may be agreed upon and providing for the mortgagee's costs if the loan is not completed.

As to what expenses are covered by this undertaking, see *Re Blakesley*, 32 Beav. 379; *Sweetland v. Smith*, 1 Cr. & M. 585; *Williams v. Jones*, 55 Sol. J. 500.

(c) See L. P. Act, 1925, ss. 88 (3). A mortgagee by demise of freeholds may enlarge his term into a fee simple under the joint operation of ss. 88 (3) and 153 of the Act. A Precedent enlarging a term under the latter section will be found in Vol. I., sub-tit. Conveyances Not on Sale.

(d) A mortgagee of leaseholds whether the mortgage be by sub-demise

WHAS the title of the within named *borr* [or of X. to whom the ppty comprised in the within written charge by way of legal mtge was assured subj to the sd charge] has been extinguished by the R. P. Limitation Act, 1874. NOW in exercise of the pwr in this behalf vested in me by the L. P. Act, 1925, I HBY DECLARE that the ppty comprised in the within written charge by way of legal mtge shl from & after the exon of this deed vest in me in fee simple [for all the term created by the sd lease of —] discharged from any legal mtge affecting the title so extinguished as afsd.

IN WITNESS, &c.

XCVI.

DECLARATION of TRUST of MONEY secured by CONTRIBUTORY MORTGAGE taken in the names of TRUSTEES where the MONEY is advanced by the LENDERS in UNEQUAL SHARES (e).

THIS DECLARATION OF TRUST made etc., A., B., & C., trees, 1 ; D., one lender, 2 ; E. & F., other lenders, 3. *Recital of mtge for £3,000 to A., B., & E. on a joint account, referring to the parcels as "certain ppty situate at — thrin particularly described"* AND WHAS the sum of £3,000 in the sd mtge stated to have been advanced by the said A., B., & C. was in reality advanced as to £1,000 pt throf by the said D. and as to £2,000 the other pt throf by the said E. & F. out of moys belonging to them as trees of a setlemt dated, &c., AND WHAS the sd A., B., & C. have at the reqt of the sd other party hrtō offered to exe

or by charge by way of legal mortgage may after acquiring a title under the Limitation Acts declare that the leasehold reversion shall vest in him and, subject to any express provision to the contrary the mortgage, sub-term shall merge. When the mortgage was effected by sub-demise substitute the word "mtge" for "charge by way of legal mtge" in the form in the text.

The enlargement of the sub-term into the whole term created by the lease does not give rise to any forfeiture for want of a licence to assign : L. P. Act, 1925, s. 89 (3). Where, owing to the existence of onerous covenants or for any other reason, it is not desired that the mortgage sub-term shall be merged, substitute for the words in square brackets "for all the term implied by the within written charge or enacted by the within written mtge discharged" &c., adding "but so that the sd mtge term shall not merge in the leasehold reversion immediately expectant thereon."

(e) See *ante*, p. 103, note (b).

such declaration of trust as is hrinar contd. NOW THIS DECLARATION made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows :—

1. The sd A., B., & C., their exs, ads and assns shl stand possessed of the ppal sum of £3,000 secured by the sd mtge & the intt thron, IN TRUST as to the sum of £1,000 pt of the sd ppal sum of £3,000 & the intt on such sum of £1,000 for the sd D., & as to the sum of £2,000 other pt of the sd sum of £3,000 & the intt on such sum of £2,000 for the sd E. & F. or other the trees or tree for the time being of the sd setlmt.

2. The sd sums of £1,000 and £2,000 & the intt thron resp'tly shl have no preference or priority the one over the other, but shl be payable rateably & equally out of any moys wch shl be received or realised by the sd A., B., & C., their exs, ads, or assns, under or by virtue of the sd mtge.

IN WITNESS, &c.

XCVII.

Recitals.

DEED by a TENANT FOR LIFE SHIFTING an INCUMBRANCE affecting Part of the settled land under the SETTLED LAND ACT, 1925, to OTHER Parts of the SETTLED ESTATE (a).

THIS DEED OF MORTGAGE made, &c., BETWEEN A., *tenant for life*, 1; B., *incumbeer*, 2. *Recite 'incumbce affectg*, "the ppty described in the first schdle hto togr with other ppty, but

Power of shifting incumbrances under the S. L. Act.

(a) By the S. L. Act, 1925, s. 69, the tenant for life or a person having the powers of a tenant for life under any settlement before or after the Act, may, with the consent of the incumbrancer (which includes the owner of a rent-charge under the Improvement of Land Acts, 1864 and 1899, *Re Stafford and Maples*, [1896] 1 Ch. 235), charge an incumbrance, affecting any part of the settled land on any other part of the settled land, and on all or any part of the capital money or on securities representing capital money subject or to become subject to the settlement, whether already charged therewith or not, in exoneration of the part already charged, and by a legal mortgage or otherwise, may make provision accordingly: see also s. 82. These provisions extend to incumbrances arising under the settlement notwithstanding that they can be overreached by the statutory powers of the tenant for life. A tenant for life may sometimes attain the same object under s. 71 of the Act, by means of a mortgage of part of the settled land for the purpose of discharging an incumbrance, not being a terminable charge on another part, see *ante*, Prec. XV., p. 107. Where a choice between the two methods may be made, the difference between

not comprisg or affectg the ppty described in the second schdle hto ; " *devolon (if any) of the incumbce to B. ; recite vesting deed by wch A. became possessed of* " the fee simple of the ppty described in the first & second schdles hto togr with other ppty became vested in A subjt to the sd *incumbce* upon the trusts of the trust instrument thrin referred to : AND WHAS the sd B. has agreed that the ppty described in the sd first schedule should be released from the sd *incumbrance* & that the same shl henceforth be charged upon the ppty described in the sd second schedule hereto in exon of the sd first mentioned ppty. NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows :—

Wit-
nessest.

1. *Covenant by A. with B. for paymt of intt durg his life*, p. 18, f. 5.

2. The sd A., as tree, by virtue of the powers conferred on him by the S. L. Act, 1925, & of every other power in this behalf him enablg, hby charges the ppty described in the second schdle hto with the paymt to the sd B. of the sd sum of £—— & all intt now & henceforth to become due for the same, or " with the paymt of the sd rent-charge, of £—— from the sd —— day of —— last, upon the respive days & in the mner provd by the sd deed of &c., *i.e., the deed creating the rent-charge*," in exoneron & substiton for the sd ppty described in the first schdle hto [& so that the sd B. shl have & may exercise all such & the like powers & remedies for the recovery & obtaing paymt of the sd rent-charge against or in respt of the sd ppty described in the sd second schdle hto, or any pt throf, as were created or conferred by the sd mtge [or deed or will] of, &c., against or in relation to the sd ppty described in the first schdle hto, or may be conferred or arise by statute by virtue of this deed (b)].

the stamp required for a substituted security and a fresh mortgage respectively should be borne in mind. In the exercise by the tenant for life of the power of shifting incumbrances (as in the exercise of all other powers under the Act) he is placed in a fiduciary position by s. 107 (1) of the Act ; and the Court will in a proper case interfere to restrain him from exercising the power : *Hampden v. Earl of Buckinghamshire*, [1893] 2 Ch. 531 ; *Re Earl of Stamford and Warrington*, [1916] 1 Ch. 404 ; *Re Charteris*, [1917] 2 Ch. 379. As to the exercise by the tenant for life of these and other powers under the Acts, see *Re Earl of Stamford's S. E.*, 43 Ch. D. 84. Notice of the intention to make the charge must (unless waived under sub-s. (4) of s. 101 be given to the trustees and their solicitor under s. 101 (1) (a) and (b) ; and as sub-s. (2) of the same section does not apply to mortgages the notice must be specific.

(b) This refers to the L. P. Act, 1925, s. 101, which, as regards gross sums,

Demise.

3. The sd A., as tree, by virtue, &c., as above, hby demise unto the sd B., ALL the ppty described in the second schdle hto To HOLD UNTO the sd B. for the term of 1,000 yrs from the date hrof witht impeachmt of waste, subjt to such or the like right of redmon as the sd ppty comprised in the first schdle hto was subjt to immedly bfe the exon hrof, on paymt to the sd B., &c., as above.

4. AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

Continue paragraphs 3 (ii) to 5 of Prec. XV., p. 109.

IN WITNESS, &c.

Three Schedules.

gives powers of sale, &c., to mortgagees, and also to s. 121 of the same Act, which gives to the owner of a rent-charge or other annual sum charged on land, remedies (to which the rule against perpetuities does not apply : s. 121 (6) and s. 4 (3)) by distress and entry, or by limiting a term to trustee for raising the annual sum and all arrears, which last-mentioned section applies, as the annual sum must, it is conceived, be considered for this purpose as "arising under" the present deed. For a rent-charge or annuity the deed will stop here, unless it is thought fit to limit as further security a term to trustees or the owner of the rent-charge if held for a legal estate, which will not be so in the case of jointure or pin-money charges : see L. P. Act, 1925, s. 1 (2) (b). If the rent-charge is held for a legal estate continue as follows :—

Limita-
tion of
term to
secure
rent-
charge.

The sd A., as tree, by virtue, &c., as above, hby demises the sd ppty described in the second schdle hto to the sd B., for the term of — yrs to commence from the date hrof witht impeachmt of waste, to the intent that the sd B. may by & out of the rents & profits of the sd premes or by the sale of timber or minerals, or by mtge of the sd premes, or any pt throf, for the whole or pt of the sd term, raise the sd rent-charge charged thron, & all arrears throf, & all costs incurred by him in respt of the premes." *If so agrd, add acknmt & undertakg by him as to the settlemt, &c., as follows :—*"The sd A. hby acknowes the rt of the sd B. to production of the documts mentd in the third schdle hto (the posson of wch is retained by the sd A.) & to delivery of copies throf And hby undertakes with the sd B. for the safe custody of the same documts. AND it is hby agrd that all costs & expses incurred by either party of or incidental to the pformce of any obligon imposed by the acknmt hrinbfe contd shl be pd by the sd A., & that all costs incurred by the sd B., under this provon, togr with intt thron at the rate afsd, shl be charged on the hds described in the second schdle hto."

MORTGAGES AS AFFECTED BY THE LAND REGISTRATION ACT, 1925.

PRELIMINARY NOTE.

A REGISTERED proprietor of freehold or leasehold land may in the prescribed manner: L. R. Act, 1925, s. 25, L. R. R. 139, charge the land with the payment at the appointed time of principal with or without interest, and with or without power of sale. The person in whose favour the charge is made is to be registered as proprietor of the charge, and a certificate of charge must either be delivered to him or deposited in the registry: s. 63; and must be produced, if outstanding, to the registrar on every dealing with the charge: s. 64 (1). Where a charge or mortgage, otherwise than by deposit, is registered or protected by a caution in a specially prescribed form the land certificate must be deposited in the registry until the charge or mortgage is cancelled: s. 65. In the absence of special stipulation covenants are implied by the person creating the charge to pay the principal and interest, if any, on the appointed day, and to pay interest after default as well before as after judgment at the appointed rate: s. 28 (1); and if the land is leasehold, to pay the rent, to perform and observe the lessee's covenants and conditions, and to indemnify the proprietor of the charge against them: s. 28 (2). Subject to an entry to the contrary on the register, the registered proprietor of the charge may exercise all the powers conferred by law on the owner of a legal mortgage: s. 34 (1). He may enter into possession of the land subject to the rights of prior registered incumbrancers, and, after having acquired a title under the Limitation Acts, may declare in the prescribed form that the equity of redemption is barred, and on furnishing the necessary evidence procure his own registration as proprietor of the land with the same consequences as if he had been a purchaser for value of the land under the power of sale: s. 34 (2). He may also complete an order for foreclosure by procuring the registration of himself as the person named in the order absolute for that purpose as proprietor of the land and the cancellation of the charge and all incumbrances inferior thereto: s. 34 (3).

Charges
on regis-
tered
land.

A sale by the Court or under the power of sale operates and is completed by registration of the purchaser in the same manner, but subject to any alterations on the register affecting the priority of the charge, as a transfer of the land by a registered proprietor of the land and the charge itself and all incumbrances inferior thereto are cancelled: s. 34 (4).

A sale under registered charge operates subject to any prior incumbrances or other entries on the register to transfer the registered estate notwithstanding the creation either expressly or by implication under the Act of any mortgage term or sub-term. A transfer on sale merges any such

term or sub-term and any attempt to deal therewith apart from the charge or to keep such term or sub-term alive after cessation of the charge is void : s. 34 (5).

Priorities. Registered charges have priority according to priority of registration : s. 29. As to the manner of reserving the priority of a charge not actually made, which ought, when made, to have priority over a registered charge, see L. R. R. 144. A further advance made by a proprietor of a registered charge which is made to secure further advances is not affected by entry on the register of subsequent charges unless the further advance is made after receipt by the proprietor of the prior charge of a notice from the Registrar of the application to register the subsequent charge : s. 30.

Land charges. Land charges as defined by L. R. Act, 1925, s. 3 (ix), have priority only from the date of registration : s. 29 ; other charges alleged to have priority by virtue of a statute may be registered with an entry of the claim to priority, and if necessary such claim may be determined by the Registrar or the Court : L. R. R. 157, 158.

Pre-scribed form of registered charge. The form of registered charge, L. R. R. 139, sched., form 45, *[post]*, p. 277, is to be adopted with such alterations and additions (if any) as are necessary or desired, and the registrar allows, L. R. R. 74.

For form of transfer, see form 54 in Sched. to L. R. R. As to future advances, see L. R. R. 142, form 47. The terms of a charge can be altered on the application, or with the consent, of the registered proprietor of the land, and of the proprietors of all registered charges of equal or inferior priority : s. 31 ; see L. R. R. 150.

Incumbrances prior to registration. Incumbrances prior to first registration may on proof of title of the incumbrancer and notice to the registered proprietor of the land, be registered, but where there are more than one of such incumbrances, their relative priorities are not to be affected by the registration of some only or by the order of registration. After registration the same forms must be used and proceedings adopted as to transfer, and other dispositions of the incumbrance so registered as are required in the case of registered charges : L. R. R. 160 to 162.

Sub-charges. Charges on registered charges or incumbrances are called sub-charges, and can be made, completed, transferred and discharged in the same way, and imply the same covenants, and confer the same powers as charges, L. R. R. 163 to 166.

Dis-charge of registered charge. Where a charge is wholly or partially discharged, an entry to that effect is to be made on the register : L. R. R. 151. On the entire cessation of a registered charge, whether as to the whole or a part only of the land affected thereby, the notification of such cessation on the register merges without any surrender in the reversion expectant thereon the mortgage term or sub-term implied in or granted by the charge, or by any deed of alteration, so far as such term or sub-term affects the land to which the discharge extends : s. 35. As to the discharge of a charge in favour of a building society, friendly society, or industrial and provident society, see L. R. R. 152.

Investi-gation of title. In all cases the person about to advance money on the security of a registered charge on registered land, must make the same investigation (if any) of the title as he would if he were taking a transfer of land, see Vol. I., pp. 241 *et seq.*

Priority notice to be put on re-gister. At the time of searching the register, the person intending to advance the money may and should have a priority notice lodged at the Registry under L. R. R. 88, but in practice this precaution is usually neglected. On completion, the certificate of charge certifying the registration of the charge and containing among other things an office copy of the charge, L. R. R. 62, will be handed to him or deposited in the Registry.

The practice, extensively employed under the old law, of taking a registered charge supported by a mortgage off the register is no longer necessary and is in effect forbidden by the Act. Subject to the exceptions prescribed in L. R. R. 96, where any transaction relating exclusively to registered land or to a registered charge is capable of being effected, and is effected, by a registered disposition, any instrument other than the registered disposition which is executed by the proprietor for the purpose of giving effect to the transaction is void : s. 39. All the old objections to relying upon a registered charge alone have been met and are provided for by the Act itself. Thus, s. 34, by providing in terms that the proprietor of a registered charge shall have and may exercise all the powers conferred by law upon a legal mortgagee, places the registered chargee in the same position as a mortgagee by demise of the legal estate or a chargee by way of legal mortgage. A legal term of years is either implied in the creation of a registered charge or may be expressly created therein : s. 27 (1) (2) ; so that the difficulty formerly felt owing to the lack of a legal estate is now obviated. S. 34 further proceeds to deal specifically with the position of a registered chargee after foreclosure absolute and after he has acquired a title under the Statutes of Limitation to the land charged, both of which are set out, *ante*, p. 273.

Mortgage off the register not to accompany registered charge.

Another difficulty which was felt under the former practice was that caused by the legal estate being outstanding off the register, sometimes not under the control of the proprietor of the land. S. 69 (1) removes this difficulty by providing that whether registration was effected before or after the commencement of the Act, *i.e.*, 1st January, 1926, the proprietor shall be deemed to have the legal estate in fee simple in possession or the legal term created by the registered lease according as the registered land is freehold or leasehold, without any conveyance. This legal estate is subject to mortgages created by or under the L. P. Act, 1925, or the Act itself, or otherwise, and to overriding interests all of which have priority to the legal estate.

Legal estate outstanding off the register.

Any legal estate or term left outstanding at the date of first registration, whether before or after the commencement of the Act, or disposed of or created under s. 49 of the L. T. Act, 1875, before the 1st January, 1926, which becomes satisfied, or which the proprietor becomes entitled to require to be vested in or surrendered to him, vests in the proprietor, without any conveyance, on the cancellation of any entry protecting the same on the register : s. 69 (2).

The effect of these two subsections is that where registered charges have been supported by mortgages off the register, or by the creation of legal terms off the register, such mortgages and terms will not need to be discharged or surrendered on payment off, whilst the legal estates created by them will on the 1st January, 1926, automatically revert to the registered proprietor of the land but subject to the mortgage. Where such forms of security have been in addition to a charge on the register the chargee will have a legal term of years during the continuance of the charge : s. 27 (4).

Legal estates which purported to be conveyed to or created in favour of purchasers (including mortgagees : s. 3 (xxi)) or lessees, before the 1st January, 1926, but failed to pass or be created by reason of non-registration under the L. T. Acts, 1875 and 1897, will, on registration of the purchaser or lessee as first proprietor of the land in a compulsory area after that date, be got in under the provisions of Part II. of the First Schedule of the L. P. Act, 1925, and be vested in the person registered as proprietor

subject to any mortgage term or charge by way of legal mortgage having priority thereto : L. R. Act, 1925, s. 69 (3).

A new and alternative form of security is provided by s. 106.

Mort-
gages off
the re-
gister not
accom-
panied by
registered
charge.

Subject to any entry to the contrary on the register, the proprietor of registered land may mortgage the land or any part thereof by deed or otherwise in any manner which would have been permissible if the land had not been registered, and with the like effect. The land thus mortgaged must be described, whether by reference to the register or in any other manner, in such a manner as to enable the registrar to identify it without the production of any other document. Such a mortgage, if made by deed, may be protected by a caution in a specially prescribed form, called in L. R. R. 233 a mortgage caution, and if made otherwise than by deed, by a caution, and until so protected only takes effect in equity as a minor interest and is liable to be overridden. A mortgage by deed protected by a mortgage caution, can be registered as a charge with the same priority as the caution, notwithstanding that any interest or charge affecting the land not registered or protected on the register is disclosed. After registration a mortgagee by deed has, subject to any entry to the contrary on the register, all the powers conferred by the Act on a registered chargee, but so long as the mortgage is protected by a mortgage caution only, he cannot deal with the land by registered disposition. The mortgage devolves, may be transferred, discharged, surrendered, and dealt with by the same instruments and in the same manner as if the land had not been registered except that (i) if subsequently registered, all devolutions, dealings and notifications of cessation must be registered ; (ii) if protected by a mortgage caution, all devolutions and dealings must be protected in the same manner ; and (iii) subject to entry to the contrary on the register the priorities arising from devolution and dealings are regulated by the order of application for registration or for entry of a mortgage caution. An *ad valorem* fee is chargeable for a mortgage caution, but is credited towards the fee payable if the mortgage comes to be registered.

This form of security will probably be popular with those lenders who have always objected to the security of a registered charge alone, though all the old objections to registered charges have been removed by the Act. The forms of mortgage applicable to land which is not registered and set out in the *Precedents*, *ante*, may be used, but care must be taken to comply with the rules regarding the description of the parcels.

PRECEDENTS (a).

I.

MORTGAGE *effected by* REGISTERED CHARGE *alone (b),*
 VARIATIONS *for a* CHARGE *by* TRUSTEES *(c) and for a*
 COLLATERAL SECURITY *(d).*

LAND REGISTRY.

LAND REGISTRATION ACT, 1925

District ———.

Title No. (e) ———.

Property ———.

Date. In conson of ——— pounds (£——) [the rect whrof

(a) In every case drafts of the entries to be made on the register should be presented at the Registry for the registrar's approval together with the application for registration. It will be convenient to make the drafts in duplicate and to leave one copy at the office.

The land certificate must be deposited at the Registry when a charge or mortgage (otherwise than by deposit) is registered or protected by a caution in a specially prescribed form until the charge or mortgage is cancelled: L. R. Act, 1925, s. 65.

(b) Where some consent is required by statute to the registered proprietor making a charge, it will not be safe to take a registered charge without the prescribed consent, though possibly it may be argued that where the statute requiring the consent is prior to the L. T. Act, 1875, re-enacted by the L. R. Act, 1925, it is *pro tanto* repealed.

(c) For a charge by trustees say in the charge itself "belonging to them on a joint account," and in the stipulations, "AND IT IS HBY AGRD & DECLARED that no covt is hby implied to pay the ppal or intt seed by the charge," and for leasehold land add "nor to pay the rent nor to pform or observe the covts & condons of the registered lease nor as to indemnity in respt throf." See L. R. R. sched. form 45A.

(d) See note (i) on next page.

(e) Where there are several title numbers the district and number and the property comprised in each should be stated. Where the charge is made by a legal personal representative or other person entitled to be, but not actually registered as proprietor of the land, and the charge deals with part only of the land comprised in the title, or under L. R. R. 73, the title number must be left blank and instead of saying in the body of the charge "the title above referred to," a reference must be inserted to the last

is hby acknowledged (f)] I, A., of, &c. [(hrinar called the borrr weh expssn shl include the registrd proptor or proptors for the time being of the land charged) (g)] [as benefl owner] hby charge the land comprised in the title above referred to with the paymt to C. of, &c. [(hrinar called the mtgee)] on the — day of — of the ppal sum of £—— with intt at — p.c. p.a. payable half-yrly [quarterly] on the, *specify days*, in every year. [Where the charge is to secure further advances add “& of every other sum hereafter advanced by the sd C. with intt of the rate afsd payable on the appointed days & computed from the time of advancing the same.”]

AND IT IS HBY AGRD & DECLARED AS FOLLOWS, *add such mortgage stipulons as may be required (h) including if necy the interpretation clause, p. 75, & omitting the covenant for paymt of ppal & interest & interest after default & the covenant against registration (i).*

II.

MORTGAGE *by* REGISTERED PROPRIETOR of a LEASEHOLD

PUBLIC HOUSE to a FIRM of BREWERS, *effected by a REGISTERED CHARGE (k).*

Heading as in Prec. I., p. 277.

Date. In conson of — pounds (£——) (the rect whrof is hby acknowledged) I, A., of, &c. (hrinar called the borrr which

preceding document of title containing a description of the land to be charged.

(f) The addition of a receipt clause, though not included in the prescribed form of charge, seems desirable.

(g) If there are any stipulations the mortgagor and mortgagee should be defined as “the borrr” and “the mtgee” respectively.

(h) These stipulations are not necessarily to be confined to those mentioned in the prescribed form: see L. R. R. 74; and also the suggested stipulations appended in the L. R. R. to Form 45.

(i) Where the mortgage is by way of collateral security add “The seey effected by this charge is intd to be a further seey for the ppal sum of £—— & intt the paymt whrof to the sd C is seed by a charge Numbered — on the lands comprised in the District — Title No. — Property” or “by a mtge dated, &c.”

(k) See notes to Prec. XXXI., p. 147, and to the last precedent.

expression shl include the registered proprietor or proprietors for the time being of the land hby charged as **benefi owner** hby charge **FIRST ALL** the land comprised in the title above referred to & all trade fittings & fixtures thron. **SECONDLY ALL** the good will of the trade of a licensed victaller & beer dealer carried on upon the sd land & the benefit of all licences held in connection therewith **AND THIRDLY ALL** moy to wch the borr may become entitled under the Licensing (Consolidon) Act, 1910, or Any Act amending or re-enacting the same as compenson for the non-renewal of the sd licences as afsd with the paymt to B. of, &c., C. of, &c., & D. of, &c., trading as co-ptners under the firm name of B. & Co. (hrinar called the mtgees) or any pson, *continue as in f. 10, p. 20, with variation in note & substituting "with paymt" for "to pay."*

AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

1. The borr hby covts with the mtgees that during the continuance of this secy, *continue as at p. 148 to the end of the precedent saying, "the registered lease dated, &c., & made, &c.," the first time the lease is mentioned. The power of sale should be made exercisable (i) on the bankruptcy (a) of the borr, (ii) on execution being levied, (iii) on non-performance of covenants of lease, & (iv) on breach of covenants: see f. 7, p. 58, sub-clauses (i), (iii), (vi), & (xii).*

(a) The power of sale or of appointing a receiver cannot be exercised only on account of the act of bankruptcy or adjudication without the leave of the Court: L. P. Act, 1925, s. 110.

III.

FORM OF DISCHARGE OF REGISTERED CHARGE (a).

Heading as in Prec. I., p. 277, date. I, A.B., hby admit that the charge dated —— and registered *date* of wch I am the proptor has been discharged.

Signed *registered proptor* & attested.

IV.

TRANSFER OF A REGISTERED CHARGE (b).

Heading as in Prec. I., p. 277, date. In conson of £—— I, A.B., of —— hby transfer to C.D. of —— the charge dated —— & registered *date* of which I am the proptor [*if part only of the money secured is transferred add “as to the sum of —— pounds (£——)”*].

In Witness.

V.

MEMORANDUM *under HAND only to accompany DEPOSIT of a LAND CERTIFICATE or CERTIFICATE OF CHARGE (c).*

To A., of ——, Esq. [the —— Banking Co., Ltd]: I, B., of ——, hby declare that I have deposited with you the land certfe of [or, “the certfe of charge for £—— & intt on”] the land registered under the heading District, &c., to secure, &c., *as in Prec. LI. or LII., pp. 215, 216.*

(a) If only part of the land is to be discharged add at the end of the Precedent “as to the land shown and edged with red on the accompanying plan signed by me being part of” or if part of the money only is paid off, say “to the extent of £ ——” See Form 53 and L. R. R. 151, 152.

(b) If part only of the mortgage debt is transferred the entire charge will be registered jointly in the names of the proprietors, but the register will show in what shares the debt is held: see L. R. R. 153. For a form of transfer and discharge see Form 55.

(c) Notice of the deposit should be given to the registrar: L. R. R. 239-245. As to the effect of the deposit, see L. R. Act, 1925, s. 66, and L. R. R. 242, and as to the withdrawal of the notice, see L. R. R. 246.

VI.

MEMORANDUM *under HAND only of an* INTENDED
DEPOSIT *of a* LAND CERTIFICATE *or* CERTIFICATE
of CHARGE (a).

To A., of — [the — Banking Co., Ltd] I have this day applied for registron of myself as proptor of [a charge for £— & intt on] the land registered under the heading District, &c., & I hby undertake forthwith after I shl be so registered to deposit the land certie [certie of charge] with you to secure, &c., *as in Prec. LI. or LII.*, pp. 215, 216.

(a) See note to last Precedent.

MORTMAIN AND CHARITY.

PRELIMINARY NOTE.

Effect of S. L. Act, 1925. Mortmain. BY s. 29 (1) of the S. L. Act, 1925, all land vested or to be vested in trustees on or for charitable, ecclesiastical, or public trusts or purposes is deemed to be settled land, and the trustees, without being constituted statutory owners, have in reference to the land all the powers which the Act confers on a tenant for life and on the trustees of a settlement. The statute or other instrument creating the trust, or under which it is administered is deemed to be the settlement, and the trustees are deemed to be the trustees of the settlement, and, except where the trust is created by the will of a person dying after 1925, a separate instrument is not necessary for giving effect to the settlement. The mode of creation and the administration of the trusts and the appointment and number of the trustees are not affected by this sub-section. A conveyance of land on or for such trusts must expressly so state, and a purchaser with notice that the land is held on such trusts must see that any consents or orders requisite for authorising the transaction have been obtained. By sub-s. (2) of the same section the powers of the trustees are exercisable subject to the same consents or orders as would have been necessary if the Act had not been passed. Where the land is vested in the official trustee of charity lands, or in other persons having no powers of management, the statutory powers are exercisable by the managing trustees or committee of management, and the official trustee or other non-managing trustees are not liable for giving effect to the directions of the managing trustees or committee of management. Where a disposition is to be effected gratuitously, or for a price or rent less than the best which can reasonably be obtained, or any interest in land is acquired the same consent or order is necessary as if the disposition were a sale. Sub-s. (3) preserves the administrative jurisdiction of the Court, the Charity Commissioners, the Board of Education, or other competent authority. By sub-s. (5) any legal estate created or transferred by any set of trustees must be created or transferred in the names, and on behalf of the persons (including the official trustee of charity lands) in whom the legal estate is vested. The section does not apply to land affected by the Universities and College Estates Act, 1925. The requirements of sub-ss. (6) and (9) of s. 4 of the Mortmain, &c., Act, 1888, as to attestation and enrolment are repealed by sub-s. (4) of s. 29 of the S. L. Act, 1925.

Where it is intended to convey land to or for the benefit of a corporation for any purpose (see Mortmain, &c., Act, 1888, s. 1, and notes thereto in Bouchier-Chilcott on Mortmain) or to convey land, or personalty to be laid out in the purchase of land, for charitable purposes (see Mortmain, &c., Act, 1888, s. 13 (2), and the cases collected in Bouchier-Chilcott on Mortmain, p. 114, it must be ascertained in the former case that the corporation has either a licence from the Crown or a statutory power to acquire land, and in the latter case that the requirements of the Mortmain, &c., Acts, 1888 to 1892, are complied with.

Part I. of the Act of 1888 renders land assured to or for the benefit of a corporation without licence from the Crown or the authority of a statute for the time being in force, liable to forfeiture. Part I.

The licence will generally be obtained by a petition under the corporation's seal presented to the King through the Home Office. The Attorney-General or the Solicitor-General will then make a report upon which the licence will be either granted or refused: see Bouchier-Chilcott, 33. Licences.
Licences from the Crown may also be obtained by Royal Charter or by Act of Parliament, and in proper cases by application to the Treasury, Board of Trade, Charity Commissioners, &c.; see Bouchier-Chilcott, 6.

Part II. of the Act of 1888 renders every assurance of land, or of personalty to be laid out in the purchase of land, for charitable purposes void unless (1) the charitable purposes are to take effect immediately; (2) no provision is made for the benefit of the grantor: *Att.-Gen. v. Munby*, 1 Mer. 327; *Doe v. Pitcher*, 3 M. & S. 407; except a nominal rent, a reservation or grant of mines, minerals, or an easement, covenants as to building, &c., and a right of entry on breach of covenant: (3) the assurance if of land or of personal estate not being stock in the public funds unless made in good faith for full and valuable consideration, is made at least twelve months before the death of the grantor. The assurance if of land or of personal estate other than stock in the public funds, or, if the charitable uses are declared by a separate instrument, then that instrument must, under s. 29 (4) of the S. L. Act, 1925, be sent to the offices of the Charity Commissioners within six months after its execution or such extended period as they may allow for the purpose of being recorded in their books. This subsection does not apply to disposition of registered land or to instruments required by s. 117 of the Education Act, 1921, to be sent to the Board of Education. Part II.,
Charity.

Part III. of the Act of 1888, comprising ss. 6, 7, and 8, and extended as to s. 6 by the Act of 1892, contains the following exemptions from the operation of one or other or both of the preceding Parts of the Act, viz. :— Part III.,
Exemptions.

Section 6 in terms exempts from Parts I. and II. an assurance by deed of land of any quantity for the purposes of a public park, a school-house for an elementary school, or a public museum (see s. 6 (4) as to what these words respectively include); but provides (subs. 2) that a deed containing such an assurance and not made for full and valuable consideration (see s. 10 (iv.) as to the meaning of this expression) must be executed not less than twelve months before the death of the grantor, and must be enrolled in the books of the Charity Commissioners within six months after execution. Assurances—
for park,
school-house,
museum

The same section is by the Act of 1892 made to apply so as to exempt from Parts I. and II. an assurance by deed of land of any quantity to any local authority (defined, s. 2) for any purpose for which such authority is empowered by any Act of Parliament to acquire land, and in addition the proviso in that section that the deed must be executed not less than twelve months before the death of the assesor is not to apply to such assurances. A deed containing such an assurance may, therefore, be executed at any time before the death of the assesor, but if not made for value must nevertheless be duly enrolled under s. 29 (4) of the S. L. Act, 1925, in the books of the Charity Commissioners within six months after execution, unless made to a local authority under some later statute, such as the Education Act, 1921, s. 117, or the Housing, &c., Act, 1909, s. 8, rendering the provisions of the Mortmain Acts altogether inapplicable. —to local
authority

—for
buildings
for use of
certain
societies

Section 7 exempts from Part II., (1) an assurance of land or personal estate to be laid out in the purchase of land to or in trust for certain universities and colleges, (2) "an assurance otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, art, literature, science, or other like purposes, of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration;" but the trustees of the instrument may, if they think fit, at any time cause the instrument to be enrolled in the Central Office.

—made
under
enabling
statute.

Section 8 provides in effect for the exemption either wholly or partially from the provisions of Parts I. and II. of assurances made under the authority of any enabling statute in force at the date of the Act of 1888; and this exemption extends to the case of lands purchased out of the proceeds of sale of lands taken compulsorily under a statute directing the application of purchase-money in this manner: *Ex p. Governors of St. Thomas's Hospital*, Times Newspaper, 24th Oct., 1908; and see *Ex p. Governors of Christ's Hospital*, 12 W. R. 669.

A private Act passed subsequently to the Acts of 1888 and 1892, even though it enacts full provisions for the management of the charity incorporated by it, does not abrogate the public general Acts, which will apply with the exceptions, if any, contained in the private Act: *Re Verrall*, [1916] 1 Ch. 100.

Land
already
in mort-
main.

A conveyance (or lease, *Att.-Gen. v. Glyn*, 12 Sim. 84) to a charity of lands already in mortmain does not require enrolment: *Walker v. Richardson*, 2 M. & W. 882; *Ashton v. Jones*, 28 Beav. 460.

In considering exemptions from the Act it must be remembered that a power merely to purchase, take, hold, and enjoy land, creates an exemption from Part I., but not from Part II. of the Act. In such a case and can only be acquired for charitable purposes in accordance with the requirements of Part II.: *Nethersole v. School for the Indigent Blind*, L. R. 11 Eq. 1; and *Chester v. Chester*, L. R. 12 Eq. 444.

Part IV.,
Regis-
tered
land.

As to the forms of transfer required, see L. R. R. 122 & 123; as to the registration of incumbents, see rr. 125, 126; of the Ecclesiastical Commissioners, see r. 127; and of the Official Trustee of Charity Lands, see r. 128; and L. R. Act, 1925, s. 98.

STATUTORY EXEMPTIONS.

(i) GENERAL.

A list of statutes authorising the acquisition or holding of land in mortmain for charitable purposes will be found in Bouchier-Chilcott, p. 81. See also Tudor, 4th ed.: 3 Encycl. Prec. 279; 4 Byth. & Jarman, 4th ed., pp. 1 *et seq.*

The following are references to some of the more important of these statutes, assurances under all such of which as were in force at the date of the Act of 1888 are within the exemption contained in section 8 of that Act:—

Sites for
places of
worship,

By the Gifts for Churches Act, 1803 (43 Geo. 3, c. 108), land not exceeding five acres or chattels not exceeding in value £500 (the restriction as to value being virtually repealed by the Mortmain Act, 1891, s. 7: see

Re Douglas, [1905] 1 Ch. 279) may be given by deed enrolled or by will executed not less than three months before death for or towards the erecting, rebuilding, repairing, purchasing or providing any church or chapel where the liturgy and rites of the Established Church are used, or a residence for the officiating minister, or the outbuildings, offices, churchyard, or glebe for the same. The consent of the ordinary, or in some cases of the patron, ordinary and incumbent is required. A *feme covert* without her husband cannot convey under the Act, a disability which is not removed by the M. W. P. Acts: *Re Smith*, 35 Ch. D. 589. Only one such gift is to be made by any one person, and no glebe exceeding fifty acres is to be augmented by more than one acre. For cases under the Act, see *Re Vaughan*, 33 Ch. D. 187; *Re Smith*, *sup.*; *Re Hendry*, 35 W. R. 730.

burial
grounds,
glebes,
&c.

By the Places of Worship Sites Acts, 1873 & 1882, corporations (in some cases with certain consents) and certain limited owners may convey by way of gift, sale or exchange, in fee simple, or for a term of years, any quantity not exceeding one acre of land not being part of a demesne or pleasure-ground attached to a mansion-house, as a site for a church, chapel, meeting-house, or other place of divine worship, or for the residence of the officiating minister, or for a burial-place. A form of assurance is given in s. 4 of the Act of 1873. A grant by a tenant for life requires certain consents: see the Act of 1882, s. 2. If the property ceases to be used for the purposes of the Act it is to revert to the lands from which it was severed. The Act of 1873 contains provisions (s. 2) as to payment of the purchase-money and the method of conveyance where the land is settled and in cases of disability; and by s. 5, enables conveyances to be made to the Ecclesiastical Commissioners, or as they shall direct, and so that such conveyances shall take effect under the Church Building Acts. A list of the Church Building Acts is given in the Short Titles Act, 1896.

As to conveyances by the lord of a manor of any part not exceeding five acres of the waste for the above purposes, see the Gifts for Churches Act, 1811 (51 Geo. 3, c. 115), s. 2, repealed as to Ireland by 14 & 15 Vict. c. 71; and as to Ecclesiastical Corporations being lords of manors, see the Clergy Residences Repair Act, 1776 (17 Geo. 3, c. 53), s. 21: and see s. 193 of the L. P. Act, 1925, as to the rights of the public over common and waste land. As to conveyances on purchases made on the requisition of the Ecclesiastical Commissioners, see the Church Building Act, 1818 (58 Geo. 3, c. 45), ss. 36, 38, as-amended by the Act of 1819 (59 Geo. 3, c. 134), ss. 36-38; the Act of 1822 (3 Geo. 4, c. 72), s. 8; and the Act of 1838 (1 & 2 Vict. s. 107), s. 9. Under the Ecclesiastical Commissioners Act, 1866 (29 & 30 Vict. c. 111), s. 9, the Commissioners are authorised to hold land suitable for annexation to, and to purchase land for the endowment of, a benefice without licence in mortmain.

As to grants to the Ecclesiastical Commissioners under the New Parishes Acts for the endowment or augmentation of income of ministers, or providing any church or chapel, see the New Parishes Act, 1843 (6 & 7 Vict. c. 37), ss. 12, 22, and the Act of 1844 (7 & 8 Vict. c. 94), where a form of grant which must be recorded with the Charity Commissioners is given in the schedule: the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 24; the New Parishes Act, 1856 (19 & 20 Vict. c. 104), ss. 4, 23, extended by the District Church Tithes Act, 1865 (28 & 29 Vict. c. 42), s. 7, to authorise

Grants
for endowment
or augmentation
of livings,
&c.

land or goods to be given for the purpose of purchasing tithes with a view to annexation to a district church. As to registered land, see *ante*, p. 284.

As to grants to the Governors of Queen Anne's Bounty in augmentation of small livings, see 2 & 3 Anne, c. 20, ss. 4, 5; Queen Anne's Bounty Act, 1803 (43 Geo. 3, c. 107); and the Act of 1838 (1 & 2 Vict. c. 20), ss. 20-24, where a form of grant is given; also the Parsonages Act, 1865 (28 & 29 Vict. c. 69), s. 4. The deed must be recorded. As to land purchased under Queen Anne's Bounty, see L. R. Act, 1925, s. 99 (2).

Enlarge-
ment of
church-
yards.

As to conveyances of additional land for the purposes of enlargement of churchyards or burial places, see Consecration of Churchyards Act, 1867, ss. 4, 5, & 6, and *Clegg v. Metcalfe*, [1914] 1 Ch. 808. A form of conveyance (which does not require a stamp, s. 6) is given in s. 5 of the Act of 1867, and s. 9 of that Act is amended by the Act of 1868.

Forms of
convey-
ance for
chapels
or charit-
able pur-
poses in
special
cases.

As to conveyances of sites for chapels or charitable purposes in cases where a grant of money from a society is in contemplation, enquiry should be made whether any particular form of conveyance is required by the Society. Some of the larger religious bodies have offices where information can be obtained as to the forms adopted by them for such conveyances. In some cases the trusts are not set out at length, but are declared by reference to model deeds which have been enrolled.

—Roman
Catholics.

Information as to Roman Catholic Charities can be obtained from The Secretary, Archbishop's House, Westminster; and as to Wesleyan trust deeds from the Wesleyan Conference Office, 25, City Road, E.C. 1, and the forms can be purchased at 6, Paternoster Row, E.C. 4. Information as to, and forms of, Congregationalist trust deeds can be obtained from Messrs. Shepherds & Walters, Broad St. Place, E.C. 2; of Baptist trust deeds, from The Secretary, Baptist Building Fund, 19, Farnival St., Holborn, E.C. 4; of trust deeds of the United Methodist Church, at 12, Farringdon Avenue, E.C. 4; and of trust deeds of the Society of Friends, at 136, Bishopsgate, E.C. 2.

—Non-
conform-
ists.

—Jews.

Nearly all the London synagogues using the Polish or German ritual are governed by the scheme contained in the Local Act (33 & 34 Vict. c. cxvi.) and by bye-laws made thereunder. Information can be obtained at the office of the United Synagogue, 3, St. James Place, E.C. Information as to the Spanish and Portuguese Synagogue can be obtained from Messrs. Lindo & Co., 2, West Street, E.C. 2; as to the West London Synagogue of British Jews, commonly known as the "Reform Synagogue," from the Secretary, 34, Upper Berkeley Street, Portman Square, W. 1; and as to the Jewish Board of Deputies and as to Jewish charities generally, from The Secretary, 19, Finsbury Circus, E.C.

Welsh
Church.

In Wales and Monmouthshire the churches together with other property, including private benefactions, have by s. 8 of the Welsh Church Act, 1914, been transferred to a representative body constituted under s. 13 of that Act. By s. 7 (1) of the Welsh Church (Temporalities) Act, 1919, any property vested in or administered by the representative body is exempt from the provisions of the Charitable Trusts Acts, 1853 to 1914, except as to such property and for such time as the Charity Commissioners, upon the application of the representative body, determine.

School
sites.

As to conveyances of sites for schools, other than to local education authorities (as to which see *infra*), see the School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 10 of which gives a form of assurance. A list of the School Sites Acts is given in the Short Titles Act, 1896.

For special acts authorising various particular bodies to convey for the purposes of school sites, &c., see 4 Byth. & Jarman, 4th ed., 17.

A form recommended by the British & Foreign School Society will be found in the Educational Record of the Society, vol. 15, p. 143.

By the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), facilities were given for the conveyance of not more than one acre of land as the site of any of the institutions mentioned in s. 33. For a form of grant, see s. 13. One witness is sufficient and the deed is valid if otherwise lawful, although no consideration is given and although the grantor dies within twelve calendar months after execution: see also 31 & 32 Vict. c. 44, and the provisions of the Mortmain, &c., Act, 1888, s. 7 (2), *ante*, p. 328. As to conveyances to Technical and Industrial Institutions, see the Technical, &c., Act, 1892, ss. 6, 7, 10.

Sites for literary and scientific institutions.

Under the Recreation Grounds Act, 1859 (22 Vict. c. 27), any lands may be lawfully conveyed to trustees to be held by them as open public grounds for the resort and recreation of adults, and as playgrounds for children and youth, and a form of conveyance is given in s. 2 of the Act; the deed does not require enrolment and will be valid notwithstanding the death of the grantor within twelve calendar months after execution, see s. 2. A woodland estate to be preserved with its natural aspect and features for the enjoyment of the public is not a recreation ground within the Act: *Re Verrall*, [1916] 1 Ch. 100.

Recreation grounds.

As to conveyances of land for parks and museums, see Mortmain, &c., Act, 1888, s. 6, and *ante*, p. 283.

Parks and museums.

Many Acts authorise the inclosure or grant of parcel of a common for charitable purposes. In most cases no such inclosure or grant can be made without the authority of Parliament, or the consent of the Ministry of Agriculture and Fisheries, unless it is made to or by a Government Department: Commons Act, 1899, s. 22; see also L. P. Act, 1925, s. 194.

Inclosure or grant of commons.

Companies registered under the Companies C. Act, 1908, have power to hold land: s. 16; but if formed for the purpose of promoting art, science, religion, charity or any other like object, not involving the acquisition of gain, cannot, without the consent of the Board of Trade, hold more than two acres: s. 19; and a company incorporated in a British possession which has complied with the provisions of s. 275 of the same Act may hold land as if it were a company incorporated under that Act.

Joint Stock Companies.

(ii) LOCAL AND OTHER PUBLIC AUTHORITIES.

As to the effect of the Mortmain Act, 1892, on assurances by deed to local authorities for purposes for which such authorities are authorised to acquire land, see *ante*, p. 283.

Local authorities.

Land may be acquired and held under the following Acts for the purposes of those Acts; by any Government department where the land has been occupied by a Government department during the war under the Defence of the Realm (Acquisition of Land) Acts, 1916 and 1920, subject to the payment of compensation under the Acquisition of Land (Assessment of Compensation) Act, 1919. As to the evidence to be received by the arbitrators under the last mentioned Act, see *Percival v. Peterborough Corporation*, [1921] 1 K. B. 414, and as to what is meant by "public authority" under it, see *Metropolitan Water Board v. Barton*, [1921] 1 Ch. 299; by local authorities (as defined by the Public Health Act, 1875, s. 4, and the Local Government Act, 1894, s. 21) under

the Public Health Act, 1875, ss. 7, 175, 176, 276; by County Councils under the Local Government Act, 1888, ss. 65, 79; by Metropolitan Borough Councils under the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 42, and the London Government Act, 1899, ss. 4 (1), 5 (2); by municipal corporations under the Municipal Corporations Act, 1882, ss. 105, 107; by rural district councils (in addition to their powers under the Public Health Act, 1875, s. 276) under the Public Health Act, 1890, s. 5; Local Government Act, 1894, ss. 21 (2), 25, and the Public Health Act, 1908; by parish councils under the Local Government Act, 1894, ss. 3 (9), 8, 9; by the Prison Commissioners under the Prison Act, 1877, s. 6; by Drainage Boards under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), ss. 28, 66; by the Metropolitan Water Board under the Metropolis Water Act, 1902, s. 1 (2); by the Port of London Authority under the Port of London Act, 1908, s. 1 (2); and by the Road Board under the Development, &c., Act, 1909, ss. 7 (2), 11, whose functions are now vested in the Ministry of Transport.

As to the acquisition of land by various local or public authorities for high-way purposes, see the Public Health, &c., Act, 1907, s. 95; for educational purposes, see the Education Act, 1921, ss. 110-117. Assurances under this Act are exempt from the provisions of the Mortmain Acts: see s. 117 of the Act. Assurances must be registered in the books of the Board of Education as soon as possible after execution; and need not be recorded in the books of the Charity Commissioners: S. L. Act, 1925, s. 29 (4) (as to transfers by the managers of an elementary school to a local education authority, see Education Act, 1921, s. 38); for museums and gymnasiums, see the Museums, &c., Act, 1891, s. 11; for public libraries, see the Public Libraries Act, 1892, ss. 12, 13, and the Public Libraries Act, 1919, s. 6, and as to the impossibility of using land acquired for a public library for any other purpose, see *A.-G. v. Mayor of Westminster*, [1924] 1 Ch. 437; for technical and industrial institutions, see the Technical and Industrial Institutions Act, 1892; for workhouses, see the Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69), ss. 1, 6, 7 (as amended by the Divided Parishes, &c., Act, 1882, s. 14 (3)), and the Local Government Board Act, 1871, s. 2; for certified reformatory schools, see the Children Act, 1908, s. 74 (12); for small holdings and allotments, see the Small Holdings, &c., Act, 1908, ss. 7, 25, 38; the Land Settlement (Facilities) Act, 1919, ss. 1-13, and ss. 16 and 17, amended by the Land Settlement (Amendment) Act, 1921; for working class dwellings, see the Housing, &c., Act, 1909, s. 2; the Housing Town Planning, &c., Act, 1919, ss. 9-17; as amended by the Housing, &c., Act, 1923; the Housing Act, 1925, and s. 8 and Part II. of the 3rd Schedule of the Town Planning Act, 1925; for mental deficiency institutions, see the Mental Deficiency Act, 1913, s. 38 (3); for military purposes, see the Military Lands Acts, 1892-1903, the Territorial, &c., Act, 1907, ss. 1 (3) (b), and 4 (1) (b), the Regulations for the Territorial Force and for County Associations, 1910, pars. 731, 767, Appendices 2, 14, 15, and the Public Works Loans Act, 1908, s. 6; for naval purposes, by agreement, see the Admiralty Lands & Works Act, 1864 (27 & 28 Vict. c. 57), ss. 3, 4, 9, compulsorily, see the Coast Guard Service Act, 1856 (19 & 20 Vict. c. 83), s. 5, and the Naval Works Act, 1895, s. 2; and for naval volunteer purposes, see the Naval Lands (Volunteers) Act, 1908; for burial grounds, see the Burial Act, 1852 (15 & 16 Vict. c. 85) (which applies to the Metropolis only), ss. 24, 26, 27, the Act of 1853 (16 & 17 Vict. c. 134), s. 7, the Act of 1854 (17 & 18 Vict. c. 87), ss. 1, 2, 6, and the Act of 1857

(20 & 21 Vict. c. 81), ss. 4, 7, 8, 26; for cemeteries, see the Public Health (Interments) Act, 1879; for crematoria, see the Cremation Act, 1902; for electrical generating stations, see the Electricity (Supply) Act, 1919, s. 9; for ferries, see the Ferries (Acquisition by Local Authorities) Act, 1919, s. 1; for the purposes of a Fishery Board under the Salmon and Freshwater Fisheries Act, 1923; for afforestation, see the Forestry Act, 1919, s. 7; and land may be accepted by the Ministry of Agriculture or by the Council of any county or county borough under the Soldiers and Sailors (Gifts for Land Settlement) Act, 1916, s. 1.

An urban district or borough council (*Kirkdale Burial Board v. Liverpool Corporation*, [1904] 1 Ch. 829) or a parish meeting (Local Government Act, 1894, s. 7) may take upon themselves the duties of a burial board under the Local Government Act, 1894, s. 62.

As to the acquisition of open spaces and disused burial grounds, see the Open Spaces Act, 1906; of commons, see the Commons Act, 1876, s. 8, and the Act of 1899, s. 7; of the undertaking of a market company, see the Public Health Act, 1875, s. 168, and the Act of 1908; and of ancient monuments, see the Ancient Monuments, &c., Act, 1913, s. 2.

Land acquired by a local authority for the purposes of interment, but which is in fact never set aside for those purposes is not a "a disused burial ground" so as to be subject to the restrictions on sale imposed by s. 3 of the Disused Burial Grounds Act, 1884, and may be sold by the authority under ss. 26 & 28 of the Burial Act, 1852 as amended by s. 7 of the Burial Act, 1853: *Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214.

Under the Working Classes Dwellings Act, 1890 (which does not apply to land given for charitable purposes: *Re Sutton*, [1901] 2 Ch. 640), assurances may be made by deed or will of land (which if assured by will must not exceed five acres) for providing dwellings for the working classes in populous places as defined in s. 1, and the provisions of Parts I and II of the Mortmain, &c., Act, 1888, do not apply to such assurances; but they must be by deed enrolled within six months after execution in the books of the Charity Commissioners if the land is in England or Wales, or registered in the office of the registry of deeds in Dublin if the land is situated in Ireland. This Act is not confined to local authorities, but the exemption conferred by it is similar to that of the Mortmain, &c., Act, 1892, as to which see *ante*, p. 283.

Except with the approval of the Ministry of Health and subject to the provisions of the Public Health, &c., Act, 1907, s. 95, and the Education, Act, 1921, s. 114, as to which see Vol. I, sub-tit. Conveyances on Sale, a local authority cannot use land bought for purposes of one Act authorising purchase for one purpose for purposes of another Act authorising purchase for another purpose: *Att.-Gen. v. Hanwell U. D. C.*, [1900] 2 Ch. 377; *Att.-Gen. v. Pontypridd U. D. C.*, [1906] 2 Ch. 257; unless temporarily: *Att.-Gen. v. Teddington U. D. C.*, [1898] 1 Ch. 66.

The Public Trustee may hold land notwithstanding the absence of any provision in the Public Trustee Act, 1906, enabling him to do so: *Re Leslie*, [1911] 1 Ch. 611; and he has a licence in mortmain dated 1st January, 1908. He is, however, prohibited from accepting any trust exclusively for religious or charitable purposes: P. T. Act, 1906, s. 2 (5); *Re Cherry*, [1914] 1 Ch. 83.

A voluntary conveyance in mortmain requires an *ad valorem* stamp on the value of the property conveyed except in the case of "a voluntary

Public
Trustee.

Stamp
and
duties.

piece or peel of land, hby granted accordg to plans & elevons to be approved by the trees, & by the donor, & his successors in title, owners or owner of — Hall.

2. THE trees shl use their best endeavours to procure the sd church when so built as afsd, to be licensed or consecrated as a place for the celebren of divine service & for the administron of the sacramts accordg to the liturgy & rites of the Church of England, by the vicar of — Parish Church afsd for the time being (hrinar called the vicar) & his curates.

3. THE sittgs in the sd church shl at all times hrafter be & remain free & unappropriated, [or, the trees shl with the approval of the vicar let the sittgs in the sd church in such mner & for such prices as the trees shl from time to time think fit, provd that at least one-half of the sittgs in the sd church be free. And shl stand possessed of the moys to arise from the lettg of the sd sittgs Upon trust by & out of the same to satisfy all moys due or wch may become due in respt of the complon & bldg of the sd church, with the sittgs & fittgs thrin, & in connection with the licensg or consecron throf, or in any way incident thto, & also all expses incurred in repairing the sd church, & in purchasg surplices, books, & other things neey for the sd church, & in paying the salaries to the curate, organist, verger, beadle, choristers, or other servants or officers, & all other annual outgoings in respt of the sd church including premiums pd for insuring the sd church against loss or damage by fire or tempest, & for insuring the vicar & the trees against any liability that he or they may incur under the Workmen's Compenson Acts, 1906 to 1923, or any Act amending or re-enacting the same, in respt of injury to any curate, servant, officer, or workman, employed in or about the church as the trees shl think fit, & upon further trust to pay the net annual surplus of the moys to arise from the lettg of the sittings to the vicar for his absolute use].

To be used for services, &c., of the Church of England.

Sittings to be free,
or
One-half of the sittings to be free.
Pew rents to be held,
(1) to satisfy any debt in respect of the building of the church, &c.,
(2) for repairs, insurance, &c., and
(3) to pay surplus to vicar.

4. NEITHER the premes hby granted nor any pt throf shl be used for burials, nor shl any school of any description be erected thrupon, or held or carried on in any bldg erected on the sd piece of land witht the written consent of the donor, & his successors in title, owners or owner of — Hall.

Burials and schools prohibited.

5. THE trees may endeavour to procure the sd church to be made a district church or a district chapel, or a district parish

Trustees may make

church a
district
church, or
convey
land
to a cor-
poration.
Vicar
or in-
cumbent
to be
always a
trustee.

church as they may think fit, or may convey & assure the ppty hby granted with all the bldgs & erections thron, to any pson or psons or to a corporon authorised to receive the same for any of the pposes of the Church Building Acts.

6. THE vicar, until the sd church or chapel shl be made a district church or a district chapel, or a district parish church, & afterwds the incumbent for the time being of the sd church or chapel (upon signifying in writg his willingness to act) shl always be one of the trees of this deed & have the same powers as if he had been one of the origl trees.

Quorum.

7. FOUR of the trees for the time being, or if the vicar or incumbent be psnt, three of the trees shl be a quorum for all the pposes of the trusts created by this deed, & the decision of a majority of the trees psnt at a meetg shl bind the minority (c), & in case of an equality of votes the vicar or incumbent if psnt or in his absence the chairman of the meetg shall in addon to his own vote have a castg vote.

Vicar
ceasing to
be a
trustee.

8. UPON the resignon or deprivon of the vicar or incumbent he shl cease to be a tree, & during the suspension from duty of the vicar or incumbent & during the time that his benefice shl be sequestrated he shl not act as a tree, & when any lay tree shl have resided out of the sd parish of — for more than twelve consecutive months or openly ceased to be a member of the Church of England he shl cease to be a tree of this deed.

Number
of
trustees.

9. THE number of trees of this deed shl never be more than seven, & the number of lay trees shl never be less than four.

Interpre-
tation.

10. IN this deed where the context so requires or admits, the expression “the trees” shl include the trees or tree for the time being of this deed.

IN WITNESS, &c. (*d*).

(c) In the administration of trusts of a charitable nature, the general rule is that the decision of the majority of the trustees is binding on the minority: *Re Whiteley*, [1910] 1 Ch. 600.

Stamp

(d) The stamp is *ad valorem* on the value of the land: Fin. (1909-10) Act, 1910, s. 74. The deed must be executed by A. not less than three calendar months before his death: 43 Geo. 3, c. 108: and must be recorded with the Charity Commissioners.

II.

AGREEMENT *vesting the PATRONAGE of a new Church*
in TRUSTEES (a).

PARTIES, The Rt. Revd Father in God —, by Divine Per- Parties.
mission (b) Lord Bishop of — & ordinary of the rectory
[Vicarage] & Parish Church of —, 1; A., “the patron of
the same Rectory [Vicarage] & Parish Church,” 2; the Revd B.,
“rector [vicar] or incumbent of the Rectory [Vicarage] &
Parish of — afsd,” 3; C., D., E., F. & G., *proposed patrons*, 4.
WHAS for the accomodon & convenience of a certain portion Recitals.
of the inhabitants of the parish of — afsd a new church
is being built at — in the sd parish of — upon a site weh
has been duly conveyed to the Ecclesiastical Commrs for
England under the provons of the Church Bldg Acts: AND
WHAS the sd new church is intended to be consecrated by the
name of —: AND WHAS it has been arranged that the
patronage or right of nominatg a minister to the sd new church
shl on its consecron be vested in the said C., D., E., F. & G.,
or the major pt of them as trees, & in the trees for the time
being of this deed: NOW THIS DEED WITNESSETH that Wit
nesseth.
in psuance of the power vested in them by the Church Bldg
Acts, 1845 & 1848, & of every other power in this behalf

(a) This agreement (which probably need not be stamped: Church Building Act, 1822, s. 2) may be used where, before the consecration of a new church, the bishop, the patron, and the incumbent of the parish where the church is or is intended to be built agree to vest the patronage in any corporation, person or persons: see Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 23, and the Act of 1848 (11 & 12 Vict. c. 37), s. 4.

As to vesting the patronage in a person who endows a chapel of ease when made a distinct parish, see the Church Building Act, 1831 (1 & 2 Will. 4, c. 38), ss. 23 & 24, and the Act of 1838 (1 & 2 Vict. c. 107), s. 7.

As to the patronage of churches built by private persons or by subscription, see Church Building Act, 1824 (5 Geo. 4, c. 103), ss. 6-12; the Act of 1831 (1 & 2 Will. 4, c. 38), ss. 2-9, 19 & 20; the Act of 1840 (3 & 4 Vict. c. 60), ss. 3, 9 & 12, and the Act of 1851 (14 & 15 Vict. c. 97), ss. 7-15. The fact that the proposed patrons may have contributed towards the expenses connected with the new church will not make the agreement simoniacal: New Parishes Act, 1869, s. 12.

As to the transfer of a right of patronage, see the Benefices Act, 1898; and the B. Act, 1898 (Amendment) Measure, 1923, which will be found in the Law Reports edition of the statutes for 1924; Vol. I., sub-tit. Conveyances on Sale.

(b) For the Bishop of Durham substitute “Providence” for “Permission.”

Trustee
seceding
from
Church of
England.
Trustee
to be
member
of Church
of Eng-
land.
Appoint-
ment
of new
trustees.

them enablg they the pties hto of the first, second & third pts do hby resply agree that when & so soon as the sd new church of — shl have been consecrated the patronage or right of nominon to the same shl belong to & be exercised by & be vested in them the sd C., D., E., F. & G., & their assns by the names of the trees of the church of — : PROV'D ALWAYS that any pson who shl openly cease to be a member of the Church of England shl no longer be capable of actg as a tree, & a new tree may be appted in his place in the same mner as if he were dead : PROV'D ALSO that no pson shl be capable of being appted a tree of this deed unless he is a member of the Church of England : PROV'D ALSO that an apptmt of a new tree of this deed may be made durg the period of three calr months from the vacancy occurg by the survivg or continug trees or tree & after the lapse of such period by the bishop of the diocese, & that no such apptmt shl be made by the psonal rpves of a last survivg tree : PROV'D ALSO that the patronage of the sd new church shl not at any time be vested in more than five psons (c) : AND IT IS HBY AGRD & DECLARED that no convce of the right of patronage hrinbfe conferred shl be made for any ppose other than for givg effect to an apptmt of a new tree or new trees of this deed. IN WITNESS, &c.

III.

CONVEYANCE of LAND as the SITE of a MISSION HALL (a).

Parties.
Recitals.

PARTIES, A. (hrinar called the grantor), 1 ; B., C., & D. (hrinar collectively called the trees), 2. WHAS the grantor is the este owner in respt of the fee simple of the ppty hrinar assured AND WHAS it is desired to assure the ppty hrinar conveyed as an ecclesiastical charity (b) for the benefit of the

(c) See Church Building Act, 1851, s. 10

(a) See an opinion of Sir R. Webster (afterwards Lord Alverstone) and others as to deeds of this nature, published by the Church Building Society, 7, Dean's Yard, S.W. This deed must be recorded with the Charity Commissioners within six months, as it is in all respects subject to the Mortmain, &c., Act, 1888, as amended by s. 29 (4) of the S. L. Act, 1925.

The draft should be submitted for approval to all societies to which application for a grant of money is made.

(b) As to the importance of showing that the charity is ecclesiastical where

rector [vicar] of the parish [district] of —, & for the use of the members of the Church of England in the cure of the sd parish [district] in mner hrinar appearg: NOW THIS DEED Wit-
nesseth. WITNESSETH that the grantor (c), *conson & receipt clause*, as benefl owner, hby grants unto the trees, *Parcels*, Vol. I., pp. 480 *et seq.* To HOLD UNTO the trees in fee simple, UPON TRUST to permit the same & all or any bldgs or bldg wch now are or may hrafter be erected on the sd premes or any pt throf to be used by the rector [vicar] for the time being of the parish [district] of — afsd (hrinar refd to as the rector [vicar]) or his nominees or licensees as the case may be for all or any of the pposes followg, that is to say:—

1. For the celebren of divine service in accordce with the rites & ceremonies of the Church of England as by law established

2. As a school or schools for the educon of chln & adults or chln only of the labourg, manufacturg & other poorer classes in the sd parish [district], accordg to the principles of the Church of England.

3. As a residence or residences for a teacher or teachers of the sd school or schools.

4. As a class-room, meetg-room or lecture-room for members of the Church of England for confirmon or communicants' classes, or for other religious instruction, or for secular instruction of members of the Church of England.

it is intended to provide against interference by the parish council, see the Local Government Act, 1894, ss. 14, 75; *Re Perry Almshouses*, [1899] 1 Ch. 21. In the trust of a building of a strictly non-sectarian charity the following provisions were inserted: "The bldg shl not be used for the pposes of any parlar church, religious body or political party, but this provon shl not prevent the committee from letting rooms thrin for meetgs of committees connected with any parlar church, body or party provd that they offer to let rooms on the like terms for meetgs of committees of all other churches, bodies or pties requir the same." "The institute shl be managed by a committee of twelve psons, four of whom shl be nominated by the district council of —, four by the Parish Council —, & four by, a *local charity*." Non-sec-
tarian
charity.

(c) Where the conveyance is voluntary, say "hby as settlor freely & voluntarily & witht any valuable conson grts, &c."

5. As a place of meetg for clerical meetgs for social conferences of the clergy, for district visitors, for committees of any societies (parochial or orwise) connected with the Church of England, & for meetgs to be called in aid or for the benefit of any such societies.

6. As a place of meetg for a club or clubs of the labourg, manufacturg & other poorer classes of the Church of England in the sd parish [district].

7. As a lendg library for members of the Church of England.

8. For any other meetgs, or for any other objects, ends or pposes havg in view the spiritual, intellectual, moral or social wants of members of the Church of England in the parish wch the rector [vicar] may think desirable, but so that the consent of the bishop of — for the time being (hrinar called the Bishop) be obtained thto if a number not less than half of the total number of trees for the time being shl require such consent to be obtained.

AND IT IS HBY AGRD as follows:—

(i) Subjt to the visitg power of the Bishop hrinar mentd, the rector [vicar] (d) shl have the sole managemt of the sd premes & the bldgs for the time being thron, & shl from time to time direct for what ppose or pposes & in what mner the same shl be used within the limits above laid down: AND any school or schools wch may be held on the sd premes, & the educon & instruction to be given thrin, shl, subject to the provisions of the Education Act, 1921 (e), be under the sole managemt & control of the rector [vicar], who shl select, appt, & at his pleasure dismiss the teacher or teachers of the sd school or schools [with this reservon, namely, that no pson shl be appted to be a teacher who is not a *bonâ fide* member of the Church of England].

(d) When the management is to be vested in a committee substitute in this place for "rector [vicar]" the words "& to the right of the rector [vicar] to use the sd bldgs except the teachers' residences (if any) for the pposes of Sunday-schools & religious services on Sundays, Good Friday, & Christmas Day, a committee to be appted as hrinar mentd," and make consequential alterations. Add clause stating the constitution of the committee, which must depend on the circumstances of the case.

(e) See the Education Act, 1921, ss. 29, 41, and 133.

(ii) The powers conferred on trees holdg land on or for charitable ecclesiastical or public trusts or ppses by the S. L. Act, 1925, shl not be exercised by the trees or their assns wtht the consent in writg of the Bishop (a).

(iii) If any tree of this deed shl reside out of the parish [district] for more than twelve consecutive months, or if in the opinion of the Bishop, rector [vicar] & the majority of the trees to be signified by writg signed by them he shl openly cease to be a member of the Church of England, he shl cease to be a tree.

(iv) The power of appointg a new tree or new trees of this deed shl be exercisable by the rector [vicar]: Provd that no person shl be capable of being appted a tree of this deed unless he be a member of the Church of England.

(v) The Bishop shl have the powers of a visitor (b) over the trust premes & over the managemt & control throf, & the rector [vicar], shl in all things whatsr pertaing to the sd trust, observe & carry out all directions or orders from time to time made or to be made by the Bishop.

(vi) Durg the absence, disability or suspension from duty of the rector [vicar] or the avoidce of the benefice, all the powers & authorities hby vested in the rector [vicar] may be exercised by the officiatg minister, or, if there shl be more than one such minister, by the principal officiatg minister, of the Church of —, within the sd parish [district]. Provd that the power of appointing a new tree or new trees hrof shl not be exercised by such officiating minister or ppal officiating minister wtht the consent in writing of the Bishop.

(vii) If it shd be hrafter desired to use the premes or any pt throf for the pposes of a duly consecrated church, it shl be lawful for the trees hrof, with the consent of the Bishop, by deed executed by them to revoke & make void as to all or any pt of the sd premes the trusts hrinbfe contd & to convey the sd premes or any pt throf to any pson or psons or corporation duly authorised to receive the same to be held for any of the pposes of the Church Bldg Acts.

(a) As to the necessity of obtaining the consent of the Charity Commissioners to any such sale, see Vol. I., sub-tit. Conveyances on Sale.

(b) The decision of a visitor on a point within his jurisdiction is final: *Whiston v. Dean of Rochester*, 18 L. J. Eq. 473, at p. 478.

[(viii) *Statement as to value*, Vol. I., p. 525.]

IN WITNESS, &c.

IV.

REGULATIONS *for the MEETINGS of TRUSTEES.*

1. An annual meetg of the trees shl be held in every yr at — o'clock on the — day of —, or at such other time in the month of — as the chairman or any three trees shl from time to time appt.

2. A special meetg of the trees may at any time be convened by the chairman or any three trees.

3. At least one week's notice of the annual meetg & fourteen days' notice of a special meetg shl be given or sent by post to each tree at his usual dwellg-house. Such notice shl state the time & place of the meetg & the nature of the business to be transacted thereat.

4. All meetgs shl be held at —, or at such other place in the parish of — as shl be named in the notice of the meetg.

5. A meetg may be adjourned wtht any notice being sent to the trees who are not psnt at the meetg.

6. — trees at a meetg shl form a quorum.

7. The first chairman shl be —, who shl remain in office till the end of the annual meetg to be held in the yr —, at wch meetg & at every subseqt annual meetg a chairman shl be appted to remain in office till the end of the then next annual meetg.

8. If the office of chairman shl become vacant durg his yr of office, the trees may at a special meetg appt any other tree to be chairman till the end of the next annual meetg.

9. If the chairman shl not be psnt within ten minutes after the time appted for a meetg, the trees then psnt shl appt one of their number to act as chairman durg that meetg.

10. The decision of the majority of the trees psnt at a meetg shl be bindg. In case of equality of votes the chairman shl have a second or casting vote.

11. Minutes of the proceedings of the trees shl be kept in a book, & shl be signed by the chairman of the meetg, & when

so signed shl be conclusive evidence of what was done at the meetg (a).

12. These regulons may from time to time be altered at an annual meetg of the trees.

V.

SETTLEMENT *by way of RENEWABLE Trust, of PROCEEDS of SALE of FREEHOLDS and STOCKS and MONEY, intended to be devoted to RELIGIOUS or CHARITABLE PURPOSES, but to remain PRIVATE PROPERTY (b).*

PARTIES, A. & B. (hrinar called the settlors), 1; L., M., N., & O. (hrinar called the trees), 2. *WHAS* by a convyce bearg Recitals.

(a) In some cases the following form may be useful: "If a copy of a resolution intd to be proposed at a special meetg is given or sent togr with the notice of such meetg, & all the trees shl bfe the day apptd for such meetg give or send to the chairman their written consent to such resolution, such resolution shl be deemed to have been carried at such meetg notwithstdg that such meetg shl not in fact be held or that less than a quorum of the trees shl attend such meetg, & acedgly a pper entry shl be made by the chairman in the minute book."

(b) The scheme of this Precedent has for its object, as will be seen, the avoidance of the creation of any trust of a charitable or public nature; so as to exclude the application of the Charitable Trusts Acts, or (as to land) the Mortmain Acts and the S. L. Act, 1925, and any other existing or future legislation or jurisdiction affecting religious or charitable endowments; but at the same time practically to ensure that the property shall be devoted to the objects of the particular community or association by permission of the persons beneficially interested under the trusts. The user of the property for the contemplated purposes, being merely permissive, could not of course give rise to any legal right by prescription or otherwise. The scheme seems calculated to work satisfactorily, and to be capable of extensive application.

Scheme embodied in Precedent.

The object in view is attained by vesting an overriding power of appointment in a sufficiently numerous body of persons composed of members or friends of the community. The trust being a private one, and not charitable, must be kept within the limits of lives in being and 21 years required by the rule against perpetuities, and will require renewal from time to time. The overriding power, as it cannot last beyond the lifetime of the longest liver of the donees, is necessarily free from objection in this respect. The trust in default of appointment might also be extended to the lifetime of the longest

Renewable trust.

Convey-
ance of
even date
of free-
holds and
lease-
holds in
trust for
sale.

even date with & made betn the same pties as & exted immedly bfe the exon of this deed, the ppty specified in the first schdle hto has been conveyed by the settlors to the trees in fee simple, upon trust for sale in mner thrin mentd, & to stand possed of the net moys to arise from the sale throf & of the sd ppty & of the net rents & profits to arise from or in respt of the same until the sale throf, upon such trusts & subjt to such

liver of the donees of the power ; but it is thought better to limit it to a fixed term of 21 years, if the donees or any of them should so long live. The trust will be renewed as often as may be thought desirable by the execution under the power of appointment of a precisely similar declaration of trust *mutatis mutandis*, so that the ultimate trust will never take effect in possession.

Over-
riding
power.

The overriding equitable power is vested in the donees or the survivors, or a majority of them, so as to prevent difficulty should any of them secede or dissent ; this power will enable them to call upon the trustees to transfer or create a legal estate in the land in priority to the trust for sale and to raise money out of it by mortgage : L. P. Act, 1925, s. 3 (1) (b) (ii). The power should be vested in named persons, and not in the members for the time being of the community, as there might be a doubt as to what constitutes membership ; and it is also better to avoid giving the members an interest as such.

Trusts in
default of
appoint-
ment.

The objects of the trusts in default of appointment are the donees of the power ; but a subsidiary discretionary trust and power of appointment is vested in the trustees of the deed, which enables them to exclude any of such objects from participation. This prevents the possibility of the overriding power of appointment being affected by any dealing by any of the donees with the interests taken by them in default of appointment, under the doctrine as to the suspension of powers by such dealings, which applies, although the power is vested in several persons : *Hole v. Escott*, 4 Myl. & Cr. 187. The vesting of the overriding power in a majority would probably prevent this difficulty from arising ; but the subsidiary power makes it doubly sure ; and it enables any seceding or obnoxious member to be excluded without recourse being had to the overriding power.

As to
trustees.

Having regard to the powers vested in the trustees, they should not be among the donees of the overriding power, or the objects of the trust in default of appointment. The power of appointing new trustees is left to the operation of the statute (the T. Act, 1925, s. 36), so as to be in the surviving or continuing trustees ; but, if need be, new trustees could be appointed under the overriding power ; and recourse should be had to this for removing a trustee who is objected to.

Stamp.

The declaration of trust will require an *ad valorem* settlement stamp on the value of the stocks, &c., settled.

On the death of any of the persons named in the third schedule, his share in the settled property will become liable to succession and estate duties. In order to avoid a high rate of estate duty, the donees of the overriding power should not be persons of large fortune.

Convey-
ance in
trust for
sale.

In the case of land, there will be a conveyance in trust for sale of even date (as recited), with the necessary powers of leasing, &c., similar to the form used in settlements : see *post*, sub-tit. Settlements (Personal) and notes.

powers & provons, as shd be declared concerng the same by a settlemt thrin referred to (meang this deed) AND the convce now in recital contains certain powers to the trees for exchange the sd ppty for other ppty to be conveyed or assned to the trees upon the like trusts, & powers of leasg & mortgaging the same until the sale throf, with a declaron that^a moys reced by way of fine on the granting of leases or for equality of exchange or wch shd be raised on mtge & wch shd not be wanted for the pposes in the sd convce mentd shd be held by the trees upon the same or the like trusts as if the same had arisen from sales as thrin mentd, AND WHAS the sd pties hto are desirous of declarg such trusts of the clear surplus of the moys to arise from the sale of the sd ppty, or wch may be taken in exchange as afsd, & of the moys reced by way of fine on leases, or for equality on exchanges, or raised on mtge under the powers of the hrinbfe recited convce, & of the income throf, & of the sd ppty & premes & of the rents & profits throf until sale, as are hrinar expressed ; AND WHAS the settlors are absolutely entitled to the sevl stks, funds, shares, & secs, & sum of cash described in the second schdle hto & are desirous of vestg the same in the trees upon the trusts hrinafter declared concerng the same ; AND WHAS a community or association called " ——— " was some time since established & is now existg at ——— for carryg on works of religion & charity, & the sd ppty has for some time past been & are at psnt being by permission of the benefl owners throf occupied, used, & employed, & the income of the sd stks, funds, shares, & secs has been & is being also used & employed permissively as afsd for the pposes of the sd community or some of such pposes ; AND WHAS it is contemplated that the sd ppty, stks, funds, shares, secs, & cash may hrafter by permission of the psons for the time being benefly entitled thto under the trusts hrinar declared be occupied, used, or employed for the pposes of the sd community or some of such pposes, but it is the express object & intention of the pties hto in declarg the trusts hrinar contd that all the sd ppty & premes shl be & remain strictly private ppty, & so as to be wholly unfettered by & free from any trust whatever in favour of the sd community or any of the pposes throf, or any trust of a religious, charitable, or public nature, & to the intent that any occupon, use, or employmt of the same for the pposes of the sd community, shl remain & be

Desire to settle freeholds and leaseholds.

Title to stocks, &c.

As to permissive use of premises.



Intention
to trans-
fer stocks.

As to
further
settle-
ment.

Wit-
nesseth.

Declara-
tion of
trust.

As per-
sons
named in
third
schedule
or survi-
vors or a
majority
shall
appoint.

In default
discre-
tionary
trust for
21 years
of income
for such
persons.

entirely permissive & shl not create or give rise to any right whatever on the pt of the sd community in respt throf : AND WHAS the sd respective stks, funds, shares, secs, & cash are intd to be forthwith transferred & pd to the trees ; AND WHAS further stks, funds, shares, secs, or moys may possibly hrafter be transferred or pd to the trees or tree for the time being of this deed to be held upon the trusts hrof. NOW THIS DEED WITNESSETH that the trees shl stand possed of the clear surplus of the moys to arise from the sale of the sd ppty comprised in & conveyed by the sd convce of even date hwith, or wch may at any time or times be taken in exchange under the afsd power of exchange, & also of the moys to be reced by the trees by way of fine on leases or for equality on exchanges, or wch may be raised on mtge under the powers of the sd convce & may not be required for the pposes throf as afsd (after paymt of expses), & of the income of all such moys as afsd, & also of the sd stks, funds, shares, secs, & cash when the same shl have been transferred & pd to the trees as afsd, & of the income throf resply, & also of the sd ppty comprised in & assured by the sd convce of even date hwith or wch may be taken in exchange as afsd & the net rents & profits (hrinar called the income) throf until sale Upon the trusts followg, that is to say, UPON TRUST for such pson or psons, for such pposes & in such manner & subjt to such powers & provons in all respts as the sevl psons named in the third schdle hto or the survors or survivor of such psons or a majority of such psons or of such survors shl from time to time or at any time hrafter by any deed or deeds, revocable or irrevocable appt, AND in default of & subjt to any such apptmt, Upon trust durg the term of 21 yrs from the date of this deed, in case the sd psons named in the third schdle hto or any of them shl so long live, to pay or apply the income of All & singr the sd trust premes to or for or to permit the same to be reced or enjoyed by or for, & to permit such of the sd ppty as shl for the time being be unsold to be occupied or enjoyed by or for, the psonal & individual maintence, residee, board, lodgg, support, or benefit of all or such one or more exclu- sively of the others or other of the psons named in the sd third schdle hto or of the survors for the time being of them as the trees shl in their absolute discron from time to time

by writg under their hands appt or, witht any such apptmt in writg, shl think fit to permit to become objects of this psnt trust & in such mner in all respts as shl be so appted or permitted, & so that in the absense of any such apptmt in writg as afsd or any written expression of intention by the trees to the contrary & subjt to such apptmt or expression of intention (if any), the right to the benefl rect, occupon or enjoymt of such income, ppty, & premes, shl durg the term afsd be considered to be vested from time to time in all the sd psons named in the third schdle hto or such of them as shl for the time being be livg in eql shares ; PROV'D ALWAYS (but subjt always to the overridg power of apptmt hrinbfe contd as afsd) that the whole or any pt of the capl of the sd trust ppty & premes may at any time durg the continue of the sd term of twenty-one yrs be pd, transferred, or applied by the trees or by their written direction or authority, or by their permission & witht any such direction or authority in writg unto or for the psonal & individual benefit or use of all or any one or more of the sd psons named in the third schdle hto or of the survors for the time being of them, as the trees in their absolute discron may think fit, in like mner as the income throf is hrinbfe directed or authorised to be pd or applied, & so that the trees shl be free from all responsibility in respt of such paymt, transfer, or applicon ; PROV'D ALSO that if & so long as the income or capl of the sd trust ppty & premes or the sd unsold freehd [and leasehd] ppty or any pt throf resply shl at any time or times by permission (whether express or implied) of the psons for the time being beneflly entitled to the rect, occupon, or enjoymt throf under the trusts hrinbfe declared, or witht objection in writg made to the trees by such psons or any of them, be reced, occupied, or enjoyed for the pposes of the sd community or any of such pposes or in any other mner not in accordce with the trusts hrinbfe declared, the trees shl not be under any liability or responsibility whatsr in respt of such rect, occupon, or enjoymt ; AND IT IS HBY further declared that from & after the expiron or sooner determinon of the sd term of twenty-one yrs (& in default of & subject to any apptmt under the overridg power of apptmt hrinbfe contd as afsd the trees sh stand possed of the capl & income of all the sd trust ppty & premes

The like
as to
capital.

As to
permis-
sive use
by com-
munity.

Trust at
end of 21
years for
survivors
of same
persons as
trustees
appoint.

In de-
fault
equally.

Powers of
manage-
ment, &c.

Powers
of invest-
ment, &c.
and vary-
ing,

or so much throf resply as shl not have been applied or disposed of under the trusts or powers hrinbfe contd & of the sd unsold hds, Upon the trusts followg, that is to say, If the sd term shl expire by lapse of time, Upon trust for all or such one or more exclusively of the others or other of such of the sd psons named in the third schdle hto as shl be livg at the expiron of the sd term of twenty-one yrs as the trees shl bfe such expiron by any deed or deeds revocable or irrevocable appt; AND in default of & subjt to any such apptmt Upon trust for such of the sevl psons named in the third schdle hto as shl be livg at the expiron of the afsd term, & if more than one in eql shares as tenants in common : but if the sd term shl determine before the expiron of the sd period of twenty-one years, then Upon such trusts as the trees shl before the expiron of such period appt and in default of & subjt to any such apptmt Upon trust for the psons named in the third schdle hto in eql shares as tenants in common. PROVD ALWAYS that the trees may manage or superintend the managemt of the ppty for the time being subject to the trusts of the sd convce of even date hwth or of this deed in all respts & may erect, pull down, rebuild, add to, enlarge, alter & repair houses & other bldgs & erections & drain & orwise improve the same & may insure the same against loss or damage by fire or tempest & may execute such other works thron as may be deemed expedient, with all the powers in that behalf of absolute owners, & also from time to time or at any time may delegate (either expressly or by implicon) all or any of such powers of managemt & other powers last afsd to or permit the same to be exercised by any other pson or psons (whether beneflly interested under the trusts hrinbfe contd or not), witht incurrg any responsibility for the acts or defaults of any such pson or psons or any loss or damage occasioned thby, AND may pay the expses incurred in the exercise of the powers of managemt & other powers lastly hrinbfe contd or permit the same to be pd out of the income or capl of the sd trust premes as may be thought fit ; PROVD ALSO that any moys (whether constitutg or representg capl or income) wch may at any time be in the hands of the trees subjt to the trusts of this deed may at the absolute discron of the trees be invested in the names or under the joint legal control of the trees or not less than three of them

in or upon any of the investmts or applied & disposed of in any of the modes next hrinar mentd & not orwise, & any such investmts may at the like discrion be varied or transposed into or for others of any nature hrinar authorised, that is to say, In or upon, *investmts*, see SETTLEMENTS, (PERSONAL); or in paymt of any calls wch may be made upon any shares for the time being held upon the trusts of this deed, or in the pchase of any freehd, or leasehd ppty in England or Wales, such leasehd ppty to have terms of not less than — yrs unexpired at the time of pchase (a), or in paymt of any fine payable on takg or renewg any lease of any ppty for the pposes of the trusts of the sd convce of even date hwth or this deed, or of any moy payable for equality on any exchange of any ppty for the time being subjt to the trusts of the sd convce of even date hwth or of this deed, or for the enfranchisemt of any leasehd ppty for the time being subjt to the sd trusts, or in the discharge, pchase, or redmon of any mtge, annuity, or other incumbee, or of land-tax, tithe rent-charge, or any chief-rent, quit-rent, or rent-charge on or affectg any ppty for the time being held upon the trusts of the sd convce of even date hwth or of this deed, or in paymt of the expses of pullg down, rebldg, addg to, enlargg, repairing, alterg, or improvng any houses, bldgs, or erections standg or being on any lands for the time being held upon the trusts of the sd convce of even date hwth or of this deed, or of erectg or bldg any new bldgs or erections thron, or of draing or improvng any such lands, houses, bldgs, or erections, AND it is hby agrd & declared that any stks, funds, shares, or sees in or upon wch any such moys as afsd shl be invested as afsd & the income throf shl be held & applied upon the like trusts as the moys so invested & the income throf wd have been held or applicable if the same had not been so invested & any ppty pchased or taken in exchange or on lease or orwise acquired under the trusts & powers afsd shl be conveyed to or vested in the trees acedg to law, to be held upon the same or the like trusts as are declared by the sd convce of even date hwth or this deed concerng the ppty comprised in & assured by the sd convce of even date hwth, AND the trees may accept such title

including
the pur-
chase of
land.

(a) For variations where the purchase of leaseholds for short terms coupled with a sinking fund policy is permitted, see *post*, sub-tit. Settlements (Personal).

Power to
trustees
to open
banking
account
in their
own
names
or in the
names of
other
parties.

to any ppty pchased or orwise acquired or taken in exchange or on mtge or orwise as hrinbfe or by the sd convce of even date hwith provd, as shl be deemed pper although not strictly marketable; [PROVD that nothg hrin contd shl authorise investmts in secs passg to bearer by mere delivery], PROVD ALWAYS that any moys (whether constitutg or representg income or capl), wch may from time to time be in the hands of the trees subjt to the trusts of the sd convce of even date hwith or of this deed, may at any time be pd by the trees into the — Bank or into any other bank to an acct to be kept in the names of the trees; PROVD FURTHER that any moys constitutg or representg income subjt to the trusts of the sd convce of even date hwith or of this deed, & also any moys constitutg or representg capl so subjt wch shl have been appropriated (whether expressly or by implicon) by the trees so as to be applicable as income for the ppose of such trusts, may in the absense of any direction to the contrary by the psons or pson benefly entitled to such moys under the trusts hrinbfe declared or any of such psons & witht the necessity for any express authority from such psons or pson, be pd by the trees into the — Bank or into any other bank, to an acct to be kept in the name or names of such one or more of the psons named in the sd third schdle hto as the trees shl from time to time in their absolute discrion think fit, & every such paymt shl be deemed valid & effectual as a paymt to or on acct of the psons or pson for the time being benefly entitled to such moys under the trusts afsd & the entry throf in the pass-book relatg to the acct to wch such moys shl be so pd shl be an absolute discharge & acquittee for the moys so pd to the trees who shl not be in any mner concerned to see or enquire as to the applicon throf or be in any mner liable for the loss or misapplicon throf; *Power to settle questions* “arising in the exon of the trusts of the sd convce of even date hwith or this deed. *Power to employ agents, post sub-tit. Settlements (Personal)*; AND IT IS HBY further agrd & declared that if at any time or times hrafter any further stks, funds, shares, secs, or moys shl be transferred or pd by or by the direction of the settlors or one of them to the trees, & such transfer or paymt shl be evidenced or recorded by a memo or other documt endorsed on this deed or orwise & signed by such settlors or settlor, then & in such case & in the

Power to
settle
ques-
tions,
compro-
mise, &c.
Proviso
as to
settle-
ment of
further
stocks,
&c.

absence of or subjt to any express declaron of trust or intention of the settlors or such one of them to the contrary, the ppty so transferred or pd shl be held by the trees upon the like trusts & subjt to the like powers & provons (so far as subsistg) as are hrinbfe declared & contd concerng the ppty described in the second schdle hto; **PROVD ALWAYS** & it is hby declared that all the trusts, powers & discrons hby given to or vested in the trees shl devolve upon & be exercisable by the trees or tree for the time being of this deed; **AND IT IS HBY** further agrd & declared that the settlors hby expressly release the psons named in the third schdle hto & any of them who on or bfe the exon of this deed have received notice of the hrinbfe recited contemplation of the settlors, or have expressly or impliedly undertaken to give effect thto, from all obligations (whether legal, equitable, religious, or moral), to give effect thto (b).

Provi-
sion as to
sole trus-
tee (a).

IN WITNESS, &c.

First Schdle—Freehds.

Second Schdle—Stks, &c.

Third Schdle—Names & descriptions of donees of overridg power.

VI.

DIOCESAN TRUST DEED (c).

THIS DEED made by us —, — & — WITNESSETH as follows :—

(a) If the community is for religious purposes it may be convenient to provide that if any of the persons mentioned in the third schedule or a trustee changes his religion, his rights under the deed shall cease as if he were dead : see *ante*, p. 297, and *post*, p. 318.

(b) See *Re Spencer*, 57 L. T. 519.

(c) The object of this deed is to enable gifts for church purposes to be made to trustees, called "diocesan trustees," who are as far as possible freed from responsibility, while powers of management are vested in other bodies of trustees called "administrative trustees." Although the Precedent will be but rarely used, many of the provisions may be found convenient in charitable trust deeds.

Where it was considered necessary to provide expressly against disestablishment, the following provisions were inserted: "The 'Bishop' shl mean

Disestab-
lish-
ment.

1.—We hby constitute ourselves trees to be known as the “—— diocesan trees” for the pposes & with the powers hrinar mentd, & hby declare that this deed may be referred to in any documt as the “—— diocesan trust deed, 19—.”

2.—In this deed & in the regulons hrinar mentd & in any documt expressed to be suppl or referrg hto unless the contrary appears,

Defini-
tions.

- (i) “The bishop” shl mean the Bishop of —— for the time being.
- (ii) “The diocese” shl mean the psnt Diocese of ——.
- (iii) “The trees” shl mean the diocesan trees & the survors or survor of them, or other the trees or tree for the time being of this deed.
- (iv) “The regulons” shl mean the regulons made by the trees in mnner hrinar provd.

3.—The trees may acquire real & psonal ppty of any nature, & may apply the same & the income throf for, or towards, all or any of the pposes hrinar mentd for the benefit of members of the Church of England within the diocese, that is to say :—

Objects
of trust.

- (i) Making donations or subscriptions to any soey, institon, trust, organizon, or charity now existg or hrafter to exist.
- (ii) In acquirg sites for, & bldg, restorg, alterg, enlargg, maintaing, & endowg churches, chapels (whether intd to be consecrated or not), churchyards, burial grounds, hospitals, colleges, schools, school-houses, houses of residence for any ppose, mission halls, parish rooms, clubs, institutes, & other bldgs.

the Bishop of —— & his succors, & if at any time the Bishop shl cease to be a corporon sole, the pson who shl for the time being exercise over the psnt diocese of —— or the greater pt thof the spiritual functions now exercised by the Bishop of ——. ‘The Diocese’ shl mean the district over wch the Bishop shl for the time being exercise spiritual jurisdon. ‘The Church of England’ shl mean the clergy & laity of the Episcopal Church for the time being in communion with & submittg to the spiritual jurisdon of the Bishop, & havg the same spiritual organizon, ministron, doctrine, & discipline as at the psnt time, or as near thto as the laws & canons for the time being in force shl admit.”

- (iii) Providg, maintaing, extendg, & testg by examinon or orwise educon & religious instruction.
- (iv) Providg, increasg, or contributg towards the stipends of & the relief of ministers, curates, teachers, organists, choristers, & other officers & assistants (whether clerical or lay) of the Church of England. & of their widows & families.
- (v) Genlly in the uncontrolled discron of the trees providg for the maintence & furtherce of the interests of the Church of England within or in connection with the diocese.
- (vi) Doing all such things as may to them in their uncontrolled discron appear to be incidental or conducive to the pposes afsd or any of them.

Provd that any applicon for any of the pposes afsd shl be valid, though the benefits throf may incidentally extend to members of the Church of England outside the diocese, or to psons who are not members of the Church of England.

- 4.—(i) Where ppty is vested in the trees for the genl pposes of the trust, or where no trusts are declared throf, the trees shl in their uncontrolled discron apply such ppty & the income throf for or towards all or any of the pposes mentd in the third clause of these psnts. Such ppty is hrinar referred to as “ppty held for the genl pposes of the trust.” Property held for general purposes.
- (ii) Where ppty is vested in the trees, & any special trusts are declared throf by the instrumt creatg the trust, the trees shl apply such ppty & the income throf in accordce with such special trusts, & subjt to such trusts if there shl be a surplus of such ppty or of the income throf after satisfyg the pposes of the trusts so declared the trees shl in their uncontrolled discron apply such surplus for or towards all or any of the pposes mentd in the third clause of this deed. Such ppty is hrinar referred to as “ppty held on special trusts.” Property held for special purposes.
- (iii) The provons of this deed (subject to such modifcons thof (if any) as may be declared by the instrumt creatg the trust) shl apply to ppty held for the genl pposes of the trust & to ppty held on special trusts & the income throf resply.

Power to transfer property to a stranger.

5.—It sh^l be lawful for the trees to pay or transfer any ppty held by them for the genl pposes of the trust to any pson or psons, or to a corporon, who sh^l undertake to apply the same for or towards such of the pposes mentd in the third clause of this deed as may be determined by the trees, witht the trees being responsible or liable for any loss or misapplicon throf.

Proviso as to purposes which are not charitable.

6.—Ppty held for the genl pposes of the trust sh^l not be applied for any of the pposes mentd in the third clause of this deed wch are not charitable after the expiron of twenty yrs after the death of the survor of the issue now living of His late Majesty, King Edward VII., who sh^l be livg at the time when such ppty (or if a change of investmt sh^l have taken place at the time when the ppty wch such investmts then represent) was acquired by the trees.

Property held on special trusts which are not charitable.

7.—When ppty is held on special trusts wch are not charitable then on the expiron of twenty yrs from the death of the survor of the issue now livg of His late Majesty, King Edward VII., who sh^l be livg at the date of the foundation of such special trusts, the trees sh^l hold such ppty dischgd from the special trusts for such of the pposes mentd in the third clause of this deed as sh^l be charitable.

As to accepting property.

8.—The trees sh^l have power to accept or decline any ppty or any trust.

9.—(i) The trees sh^l not, without the consent of all of them, accept any trust wch sh^l entail on them any psonal liability to make any paymts (except rates or taxes) to any corporon, pson, or psons other than the objects of the trust, or to improve, maintain, or repair any ppty, or to insure any ppty against loss or damage by fire.

(ii) It sh^l be lawful for but not incumbent on the trees to pay or discharge any rent or other outgoings, charges, or paymts in respt of any ppty held by them either for the genl pposes of the trust or on special trusts, & to improve, maintain, or repair any such ppty, & to insure the same against loss or damage by fire, & to defray the costs & expses (includg surveyor's or agent's fees) incurred by them in so doing out of the income or capl of that ppty, or if such income or capl sh^l prove insufft, then out of the income or

capl of any ppty held for the genl pposes of the trust, or in the case of ppty held on special trusts at the discrion of the trees wholly or partially out of the income or capl of ppty held for the genl pposes of the trust.

- (iii) Where the trees consider it desirable to pchase or accept trusts of leasehds (a) or any other ppty imposg a psonal liability on the legal owner throf for the time being to pay rent or outgoings, or to pform any covt, they may cause the legal este in such ppty to be vested in any pson or psons willg to accept the same upon such terms of indemnity as may be agrd upon out of the income or capl of that ppty, or out of the income or capl of ppty held for the genl pposes of the trust, or partly in one way & partly in another, &, subjt to such indemnity, upon trust to sell the same when so required by the trees & to pay the moys arisg from such sale to the trees, or as they shl direct & upon trust until sale to pay the income of such ppty, or of the unsold pt throf to the trees

Leases
for chari-
table pur-
poses.

(a) The Mortmain, &c., Act, 1888, s. 4, renders a lease for charitable purposes, except those mentioned in the third part of the Act, void if it contain a reservation of a rent, other than a nominal rent, or any provision except as mentioned in s. 4, in favour of the grantor. The Act does not, however, prohibit a lease containing no reservation of rent and no other provision in favour of the grantor; nor does it prohibit the assignment of a lease subject to rent and covenants, but the usual covenant of indemnity by the assignee would render the assignment void under s. 4.

There appears to be no objection to granting a lease at a rent and containing provisions in favour of the grantee for any of the purposes mentioned in the third part of the Act.

It should perhaps be noticed that the diocesan trustees are not "a society or a body of persons" within s. 7, sub-s. ii. If this were the case, it would be possible to evade the provisions of the second part of the Act by merely forming a committee for the purpose of carrying out any charitable purpose, and taking a conveyance to trustees for them. Probably the "body of persons" means not persons who are to manage, but persons who are to benefit by, the charity.

A grant of a lease at a rent for the site of a church, &c., cannot be made under the Places of Worship Sites Act, 1873, as such a lease is not "a gift, sale, or exchange, in fee simple," but there appears to be no objection to making an assignment for that purpose, either by way of gift or sale of such a lease.

or as they sh^l direct, & to deal with such ppty or the unsold pt throf in all respts as the trees sh^l direct.

- (iv) The trees sh^l have power to charge the ppty vested or agrd to be vested in any pson or psons under the precedg sub-clause, or the income throf, or the income or capl of the ppty held for the genl pposes of the trust, or any pt throf, in such mner as they may think pper for givg effect to the indemnity mentd in the precedg sub-clause.

Power of trustees. **10.**—Where ppty is vested in the trees they may at their discron

- (i) Apply the whole or any pt throf, whether capl or income,
 (a) In or towards paymt of the expses of the trust, provd that the genl expses of the trust sh^l not be pd out of ppty held on special trusts.
 (b) For or towards all or any of the pposes mentd in the third clause of these pnts.
- (ii) Raise moy by mortgaging the same or any pt throf, but so that no mtgee sh^l be concerned to enquire into the necessity or propriety of raisg moy or as to the amt required, or to see to the applicon throf.
- (iii) Sell the same or any pt throf & concur in makg partition or exchange throf or of any pt throf with power to give or receive moy for equality of exchange or partition, & to sell, exchange, or partition the surface apart from the minerals, or the minerals apart from the surface, & to execute any convces for the pposes afsd.
- (iv) Exercise over the same all the powers of leasg & of acceptg surrenders of leases conferred on a tenant for life by the S. L. Act, 1925, or any Acts for the time being in force amendg or re-enactg the same (a).
- (v) Invest any moy in their hands in any mner in wch accdg to the law for the time being in force trust

(a) See *ante*, p. 282. Some of the additional powers of leasing given *post*, sub-tit. Settlements (Personal) may be inserted in suitable cases.

moys may be invested, or in the pchase of freehd, or leasehd ppty, with power from time to time to vary such investmts.

(vi) Make investmts in the names of four only of the trees wherever the rules applicable to such investmts prohibit them being made in the names of more than four psons.

(vii) Accumulate any unemployed income in the way of compound intt by investg the same & the resultg income throf, but so that such accumulons may at any time be applied for any of the pposes mentd in this clause applicable thto.

Provd always that any moys or investmts arisg or made under the powers contd in this clause, & the income throf shl be held upon the trusts on wch the ppty represented by such moys or investmts & the income throf resply wd have been subjct to if such ppty had been retained by the trees.

11.—(i) The trees may from time to time, & either expressly or by implicon delegate such powers of managemt as they may think fit over any specified ppty to managers (hrinar called administrative trees), to be apptd by or in the mner directed by the instrumt creatg the trust, or if no such apptmt or direction shl be made, to be apptd by the trees in such mner & for such period as the trees may think fit. Provd that the trees shl not under any circes be responsible or liable for the acts or omissions of the administrative trees.

Power to delegate powers of management.

(ii) Where administrative trees are apptd by the trees, not merely in exercise of a power conferred on them by the instrumt creatg the trust, the trees may at any time in their uncontrolled discron either wholly or partially revoke any powers delegated to the administrative trees, or remove all or any of the administrative trees from office.

(iii) Where administrative trees are apptd by or in the mner directed by the instrumt creatg the trust, & they shl neglect or fail to exercise the powers or to make any of the paymts or to pform any of the acts mentd in the clause next followg to the satisfon of the

trees, it sh^l be lawful but not incumbent for the trees wholly or partially to revoke any powers delegated to them, or by deed executed by the majority of the trees to remove all or any of the administrative trees from office & to appt new administrative trees or a new administrative tree in their, his, or her place.

Powers of
adminis-
trative
trustees.

12.—Where powers of managemt over any ppty are delegated to administrative trees they sh^l :—

- (i) Exercise such powers in accordce with such directions (if any) as may from time to time be given to them by the trees.
- (ii) Pay & discharge all rents, rates, taxes, & other outgoings, charges, or paymts in respt throf, maintain such ppty in good & substantial repair to the satisfson of the trees & insure & keep insured any bldgs thron in the names of & in an office to be approved of by the trees against loss or damage by fire & insure & keep insured the administrative trees against any liability that they may incur under the Employers' Liability Act, 1880, or the Workmen's Compensation Acts, 1906 to 1923, in respt of injury to any pson employed by them in respt of such ppty & defray the costs & expses throf, & the costs & expses (includg surveyor's or agent's fees) incurred by the trees in ascertaing that the provons of this clause are pformed by the administrative trees, out of the income comg to their hands of the trust ppty, or out of voluntary contribons received by them.
- (iii) Render such accts as may be required by the trees, & produce pper vouchers for the same.

Incum-
bent
trustee.

13.—Where the rector or vicar of a parish or the vicar of a district is, as such, an administrative tree.

- (i) If he sh^l be suspended from duty, or if his benefice sh^l be sequestrated, he sh^l cease to be an administrative tree & the trees may appt a new administrative tree in his place, who sh^l have the same powers as such rector or vicar wd have had if he had continued to be an administrative tree.
- (ii) The ppal officiateg minister of such parish or district may act as administrative tree.

(a) Durg the absence or disability of such rector or vicar.

(b) During a vacancy in the living.

(c) In the interval after such rector or vicar shl cease to be an administrative tree by resignon of that office or under sub-clause (i) of this clause & before a new administrative tree shl be appted in his place.

14.—Where the trees hold any ppty upon trusts under wch any pson is entitled durg his life or any less period to the benefi enjoymt throf, or to the income throf, and,

Forfeiture by *cestui que trust* tenant for life.

- (i) If any act or event shl be done or happen whby if a life intt in such ppty belonged absolutely to him such intt wd become vested in or charged in favour of any other pson or psons or a corporon ;
- (ii) If he being a clerk in holy orders shl be suspended from duty ;
- (iii) If, he being a beneficed clerk, his benefice shl be sequestrated ; or
- (iv) If he goes into posson of such ppty, & shl while he remains in posson throf at any time omit at his own expse to pay & discharge all rates, taxes, & other outgoings, charges & paymts in respt throf, or to maintain & keep such ppty in tenantable repair, or, if so required by the trees, to insure & keep insured any bldgs thron in the names of & in an office to be approved of by the trees against loss or damage by fire to the satisfon by the trees, or to pay the costs & expses incurred by them (includg surveyor's or agent's fees) in ascertaing that he has pformed & done the acts & things in this sub-clause mentd, or if he shl not (if required by the trees) give such psonal or other secy to the trees as they shl require for pforming & doing such acts & things ;

Then, & in any of such cases, it shl be lawful for but not incumbent on the trees to declare by writg under the hands of the majority of the trees that the trusts in his favour shl cease as if he were dead, & on such declaron being made such pson shl cease to have any benefi intt under the sd trusts, & thenceforth the trees shl durg his life or durg such shorter period as

shl elapse, while such pson wd in the absense of this psnt provon be entitled to the benefl enjoymt of the same ppty or of the income throf, hold the income of the same ppty in trust for such of the genl pposes of the trust as may be charitable.

Alteration of diocese.

15.—In the event of the partition or alteron of the boundaries of the diocese, the trees may appropriate such pt as they shl in their uncontrolled discron think fit of the ppty held for the genl pposes of the trust to similar pposes within the area by such partition or alteron separated from the diocese, & may appt in place of the trees new trees of such appropriated ppty, & also of all or any ppty held on special trusts either wholly or partly, for the benefit of or in connection with any pt of the area so separated, & may by deed executed by a majority of the trees declare the trusts of such appropriated ppty provd that the trusts to be so declared shl, so far as possible, be identical with the trusts of this deed.

Alteration of parish, &c.

16.—In the event of the alteron of the boundaries of any archdeaconry, rural deanery, parish, or place, the trees may by deed executed by a majority of the trees make such modificons in any trusts affected by the sd alteron as shl in their uncontrolled discron appear necessary or desirable in order to carry into effect the origl objects of such trusts.

Clerks, &c.

17.—The trees shl have power from time to time to appt or dismiss officers, clerks, or servants, & to pay them such remuneron as may be agrd upon.

Meetings of trustees.

18.—(i) The trees shl hold at least one meetg, & may hold as many meetgs as they think fit in every year.

(ii) Any question submitted to a meetg shl be decided by a majority of the votes of the trees psnt at such meetg, but the chairman shl have a second or castg vote.

(iii) Except in the case hrinar mentd five trees psnt at a meetg shl be a quorum.

(iv) The trees shl cause minutes of their proceedings to be entered in a book to be kept for that ppose.

Power to make regulations.

19.—The trees shl have power at any meetg to make, vary, & revoke regulons for the pposes followg :—

- (i) The time, place, & method of callg meetgs of the trees.
- (ii) The apptmt of a chairman.
- (iii) The acceptg or deeling ppty or trusts.
- (iv) The apptmt of committees for special pposes.
- (v) The custody of moy, deeds, secs, & documts.
- (vi) The apptmt & removal of administrative trees.
- (vii) The audit of accts.
- (viii) Genlly as to the managemt of the business of the trust. Provd that no regulon shl override any provon of these psnts.

- 20.**—(i) The accts of the trees shl be audited yrly in the month of — by a professional auditor, & the deeds & secs shl be examined by two at least of the trees, & if they think fit by their solor.
- (ii) The costs of the audit & examenon shl be pd out of income.
- (iii) The amt of costs to be borne by ppty held on trust for special pposes shl, subjt to any provons contd in the instrumt creatg the trust, be pd out of ppty held on trust for the general pposes of the trust.

21.—Any dispute (not being a dispute as to the meang of this deed or of the regulons) arisg in respt of any trust betn the trees & the repve or repves of any one or more of them, or betn the trees & the administrative trees, or betn the trees & any object of the trusts, or betn the administrative trees & any object of the trusts, shl be referred to the bishop or to some pson to be nominated in writg by him as a single arbitrator under the Arbitration Act, 1889, or any statutory amendmt or re-enactmt throf, but subjt to any direction to the contrary by the arbitrator the costs of appearg by counsel or solor shl not be allowed as betn the parties.

Arbitra-
tion.

22.—If any dispute shl arise betn the trees & the administrative trees, or betn the trees & any object of the trusts, or betn the administrative trees & any object of the trusts as to the meang of this deed, or of the regulons, the decision of the trees given at a meetg shl be final & conclusive.

23.—The decision of the trees given at a meetg that any proposed applicon of ppty or acceptce of a trust or of a power will be in accordce with the provons of this deed shl be final & conclusive.

Power
to vary
trusts.

24.—It shl be lawful for the trees by deed executed by two-thirds of the trees in psuance of a resolon passed at a meetg of the trees at wch a majority of the trees shl be psnt,

- (i) To declare addonal pposes being pposes for the benefit of the members of the Church of England within the diocese in wch ppty held for the genl pposes of the trusts may be applied.
- (ii) To revoke or vary any of the provons hrin contained.
- (iii) To revoke any special trusts in favour of any ppose wch shl be stated in the resolon to have become obsolete or impossible to be carried into effect, & to substitute & declare other trusts in favour of one or more of the pposes mentd in the third clause of these psnts, but so that if the trusts so revoked were for the benefit of a pson or psons within a certain area, the substituted trusts shl be for the benefit of a pson or psons within the same area.

Provd that no resolon for the ppose of sub-clause (iii) of this psnt clause shl be passed by the trees if ppty comprised in the trust is managed by administrative trees apptd by or in the mner directed by the instrumt creatg the trust unless two-thirds at least of the administrative trees shl in writg reqt the trees to pass the same.

Concur-
rence of
trustees.

25.—Trees dissentg from any lawful decision of the majority of the trees shl, nevertheless, concur in executg & doing all such instrumts & acts as may be requisite for the ppose of givg effect to such decision.

Power to
obtain
incorpo-
ration.

26.—The trees may at any time obtain incorporon either for all pposes or for the ppose of one or more trusts.

Trustee
seceding.

27.—If any tree or administrative tree shl, in the opinion of two-thirds of the trees, evidenced by writg under their hands & under the hand of the bishop, openly leave the Church of England, he shl cease to be a tree or administrative tree, & shl be deemed to be unfit to act as such.

Power to
appoint
new
trustees.

28.—(i) The power of apptg a new tree or new trees of this deed shl be exercised by the majority of the trees with the consent in writg of the bishop.

(ii) It shl be lawful for two-thirds of the trees, with the consent in writg of the bishop, to appt any pson

or persons as an additional tree or additional trees though there may be no vacancy in the office of tree.

(iii) A tree or administrative tree may at any time by writing under his hand resign his office.

29.—The trees may be appointed trees of any existing trust which to them in their uncontrolled discretion shall appear conducive to any of the purposes mentioned in the third clause of this deed, but the provisions of this deed shall not apply to such trust unless such provisions are expressly applied thereto.

Power to accept existing trust.

30.—The trees may accept & exercise the power of appointing new trees of any property, notwithstanding that such property be not vested in them, provided that the trusts on which such property is held shall appear to them in their uncontrolled discretion to be conducive to any of the purposes mentioned in the third clause of this deed.

Power to accept power of appointing new trustees of existing trust.

IN WITNESS, &c.

NOTICES.

1.
Notice to
debtor of
assign-
ment of
debt (a).

To A., *debtor*, of, &c.

I HBY give you notice that by an assnmt [a deed] dated this — day of —, the ppal sum of £—, wch by an agrmt [deed] dated the — day of — you agrd [covenanted] to pay to B., of, &c., togr with all intt due & to become due thron, as from the — day of — now last past, has been assned by the sd B. to C., of, &c. Dated, &c.

(Signed) D., Solor for the sd C.

Notice of
assign-
ment of
*chose in
action*.

(a) Notice to the debtor of the assignment of a legal or equitable *chose in action* is necessary, (i.) to prevent the debtor paying the assignor or some other person; (ii.) to prevent a subsequent assignee gaining priority by notice; (iii.) in the case of debts due to the assignor in his trade or business, to take them out of his order and disposition within s. 38 of the Bankruptcy Act, 1914; see *Re Neal*, [1914] 2 K. B. 910, and cf. *Rutter v. Everett*, [1895] 2 Ch. 872; (iv.) in the case of a legal *chose in action* to perfect the assignment so as to enable the assignee to sue in his own name under s. 136 of the L. P. Act, 1925, re-enacting s. 25 (6) of the Judicature Act, 1873, which has been held to include an assignment by way of mortgage: see *ante*, p. 69. The giving of notice is not equivalent to taking possession: *Re Pawson's Settlement*, [1917] 1 Ch. 541. As to what is sufficient notice, see *Denney v. Conklin*, [1913] 3 K. B. 177. The notice must be in writing even if the debtor is unable to read or write: *Hockley v. Goldstein* (1920), 36 T. L. R. 539.

An assignee of an equitable *chose in action* who gives notice to all the trustees in existence at the time of his assignment is entitled to priority over a subsequent assignee who takes his assignment after the death or retirement of all such trustees, and gives notice to the new trustees: *Re Wasdale*, [1899] 1 Ch. 163; though unless the notice is handed over to the new trustees with the trust papers they are not liable if they pay the wrong person: *Hallows v. Lloyd*, 39 Ch. D. 686; and see 43 Sol. J. 824, & 48 *ib.* 273, 54 *ib.* 6. If the assignee gives notice to one only of several trustees he has priority while that one remains a trustee over a subsequent assignee who gives notice to all the trustees: *Ward v. Duncombe*, [1893] A. C. 369; but not over an assignee who, taking his assignment after such one has ceased to be a trustee, gives notice to the existing trustees: *Re Phillips*, [1903] 1 Ch. 183.

The mere knowledge that one of several trustees has of his own incumbrance is not sufficient notice: *Lloyd's Bank v. Pearson*, [1901] 1 Ch. 865; nor is notice to a person who is himself the assignor sufficient: *Re Dallas*, [1904] 2 Ch. 385. But where a trustee, before his appointment acquires knowledge of an incumbrance on the trust premises in such a way that he

To E. & F., the trees of a settlemt, dated &c., & made on the marre of L., of, &c., & M., his wife, or, "of the will & codls of X., late of, &c., deced," & to all others whom it may concern.

WE hby give you notice that by a deed, dated, &c., & made, &c., *add description from parcels, as for instance*, "All the share or intt of the sd A. of or in the trust funds & ppty comprised in or subjt to the trusts of the above-mentd settlemt, or, 'will,' expectant on the death of the survor of the sd L. & M." has been assned by the sd A. to the sd B., for his absolute benefit, or, "by way of secy as thrin mentd." Dated, &c.

(Signed) C. & D., &c.

II.
Notice to trustees of settle-ment or will of assign-ment of an equit-able interest there- under to a purchaser or mort-gagee (b).

To A. & B., the trees of the will & codls of X., late of, &c., deced, & to all others whom it may concern.

TAKE notice that by a deed, dated, &c., & made, &c., *add parcels from assnmt, as for instance*, "All the share or intt of the sd A. (whether under any apptmt, or in default

III.
Notice to trustees of will of assign-ment of share of a residuary

would, on appointment, as a reasonable man, regulate the trust in the light of such knowledge, and where knowledge so acquired continues to operate on his mind after appointment, notice given after appointment of a subsequent incumbrance will not displace the priority of the earlier incumbrance: *Ipswich Permanent Money Club v. Arthy*, [1920] 2 Ch. 257.

A trustee in bankruptcy, having no better right than the bankrupt, can acquire no priority over an equitable mortgagee of the bankrupt's property by giving notice: *Re Wallis*, [1902] 1 K. B. 719; *Re Anderson*, [1911] 1 K. B. 896.

Priority as between several assignees of a *chose in action* who have not given notice of their assignments is determined by the dates of the assignments and as between those who have given notice by the dates of receipt of the notices.

As between those who have and those who have not given notice, those who have given notice have priority, except that an assignee taking with notice of a prior assignment of which notice has not been given acquires no priority over it by giving notice: *Re Weniger*, [1910] 2 Ch. 291. These remarks apply to incumbrances on as well as assignments of equitable interests in personalty but not to incumbrances on land: see *ante*, p. 92.

Where property is vested in the Public Trustee as custodian trustee the notice should be given to him and probably also to the managing trustees; see Public Trustee Act, 1906, s. 4 (2) b.

See generally as to the priority of assignments and charges, Withers on Reversions, 110.

(b) By s. 137 (1) of the L. P. Act, 1925, priority of competing interests Notice of

legatee to the trustees of his

of apptmt), of or in the trust funds or ppty representg the residuary este of the sd X." has been assnd by the sd A. (subj to the prior intts of the sd F. & G., his wife as thrinbfe

assign-
ments of
equitable
interests
in land.

in equitable interests in land (which by s. 1 (1) & (3) of the same Act now include life interests, entailed interests, and all interests in reversion or remainder) is governed by the same rules which before 1926 governed competing interests in choses in action as to which see *ante*, p. 320, note (a). The above sub-section applies to capital money and securities representing capital money whether in court or not.

Persons
to be
served.

By sub-s. (2) of s. 137 the persons to be served with the notice are (i) in the case of an equitable interest in settled land, capital moneys, or securities representing capital moneys, the trustees of the settlement, and where the equitable interest affected is created by a derivative settlement, the trustees of that settlement; (ii) in the case of an equitable interest in the proceeds of sale or rents and profits until sale of land held on trust for sale, the trustees for sale; and (iii) in any other case the estate owner of the land affected. The persons served with notice are affected by it in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose. This sub-section does not apply where the money or securities are in Court.

The notice must be in writing: sub-s. (3).

Endorse-
ment of
memo-
randum.

Where the trustees are not persons to whom a valid notice can be given, or there are no trustees, or for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay, a purchaser or mortgagee may at his own cost require a memorandum of the dealing to be endorsed on, or otherwise permanently annexed to, the instrument creating the trust, and the production of that instrument by the person having custody of it to show the endorsement or annexation. The memorandum so endorsed or annexed confers the same priority as a notice to duly qualified trustees: sub-s. (4).

In the case of settled land the memorandum is endorsed on the trust instrument, and in the case of land held on trust for sale on the instrument creating the equitable interest: sub-s. (5). Where the trust is created by statute or by the operation of law, or in any other case where there is no instrument declaring the trusts, the endorsement is placed upon the instrument under which the equitable interest was created or devolves, and where the trust arises upon intestacy, on the letters of administration or probate in force when the dealing is effected: sub-s. (6).

Custody
and pro-
duction of
notice.

The trustees from time to time of the property affected are entitled to the custody of the notice, which must be delivered to them by any person having custody of it and, subject to the payment of costs, any person interested in the equitable interest may require production of the notice: sub-s. (8).

An estate owner is under the same liability to produce documents and furnish information to persons entitled to equitable interests as a trustee for sale: sub-s. (9).

The section only applies after a trust has been created and affects dispositions by operation of law as well as by act of parties: sub-s. (10).

A trustee in one trust is not affected by notice received while acting in another: T. Act, 1925, s. 28.

appear in the same trust funds or ppty) unto the sd D. & E., upon the trusts thrin mentd. Dated, &c.

marriage
settle-
ment (c).

(Signed) H. & Co., &c.

To the — Assurce Socy. Ltd., or — Bank, Ltd.

IN the matter of a settlemt dated, &c., & made on the marre of L., of, &c., & M., his wife, or of the will & codicils of X., late of, &c., dec.

iv.
Notice to
trust
corpora-
tion (d).

Continue as in Notices II. or III.

To the — Assurce Socy.

WE hby give you notice that by a deed, dated, &c., & made &c., a certn poly of assurce, effected with you by the sd K., mtgor, on his own life, for the sum of £—, & numbered — in your books, & all moys assured by or to become payable under the sd poly, have been assned by the sd K. to the sd L., absolutely, or, “by way of mtge, as thrin mentd;” And we request you to give us a written acknowmt of the receipt of this notice. Dated, &c.

v.
Notice to
insurance
office of
assign-
ment of
a life
policy
pursuant
to Policies
of Assur-
ance Act,
1867 (e).

(Signed) M. & Co.,

Address.

Solors for the sd L.

(c) Upon the assignment of an immediate legacy notice should be given to the executors who have not renounced, or to the administrator with the will annexed: *Re Dallas*, [1904] 2 Ch. 385.

(d) Where a trust corporation has been nominated either by the settlement, or the trustees, or the Court under s. 138 of the L. P. Act, 1925, to receive notice of dealings with real or personal property, either under s. 137 of the Act or not, the person having the custody of instruments upon which notice can under s. 137 (5) & (6) be endorsed must cause the name of the trust corporation to be endorsed on those instruments. Notice given to the trust corporation operates in the same manner as a notice to trustees under s. 137, and any notice received by a trustee must be delivered by him to the trust corporation. The notice confers no priority until received by the trust corporation. The trust corporation is bound to keep a register setting out the particulars required by sub-s. (7) and may require the payment of the prescribed fee before making an entry. Any person entitled to inspect notices served on trustees may inspect and take copies of the register on payment of the prescribed fee, and on the like payment the trust corporation are bound to reply to inquiries respecting notices as if they were ordinary trustees.

Notices to
trust
corpora-
tion.

Upon a trust corporation becoming entitled to any beneficial interest in or charge on the trust property another trust corporation must be nominated in their place and all documents relating to notices handed over to the new trust corporation.

(e) Notice of this assignment should be given to the Insurance Company

VI.
Notice of
intention
to pay off
a mort-
gage (f).

To A., *mtgee*, of, &c.

I, B., *mtgor*, hby give you notice that 1 shl, on the — day of —, *six months from the date of notice*, pay off all ppal moys & intt secd by a mtge dated, &c., & made, &c. As WITNESS, &c.

(Signed) B.

VII.
Notice
requiring
payment
off of
mort-
gage (g).

To A., *mtgor*, of, &c. *If the owners of the equity of redmon are unknown, or cannot be found, the notice shd be addressed,* "To all psons interested in the equity of redmon of the ppty comprised in the mtge hrinar mentd."

TAKE NOTICE that we, B., of, &c., & C., of, &c., *mtgees*, hby require you to pay off the ppal moys owing to us on the secy of a mtge dated, &c., & made, &c., togr with all intt thron, & further, that in default of your so doing for a period of three

in accordance with the Policies of Assurance Act, 1867, s. 3, and an acknowledgment, for which the office is entitled to a fee not exceeding 5s. (s. 6), of its receipt obtained under the latter section.

Notice of
intention
to pay off
mort-
gage.

(f) This notice must be given, although not expressly stipulated for in the mortgage (Fisher, 6th ed., 760), unless the mortgagee has taken steps to enforce payment, *Bovill v. Endle*, [1896] 1 Ch. 648, or an offer of six months' interest is made in lieu of notice: *Johnson v. Evans*, 61 L. T. 18; or the mortgage is only equitable by deposit of deeds with a memorandum of deposit: *Fitzgerald's Trustee v. Mellersh*, [1892] 1 Ch. 385. It cannot be withdrawn without the consent of the mortgagee: *Santley v. Wilde*, [1899] 1 Ch. 747 (reversed on another point, [1899] 2 Ch. 474). A mortgagee of a reversionary interest in a fund in Court, which subsequently came into possession, was held entitled to six months' interest from the date of the service on him of a petition for the application of the fund in payment off of the mortgage debt: *Smith v. Smith*, [1891] 3 Ch. 550. The case of a mortgage of a life policy maturing during the continuance of the security is probably distinguishable on the ground that in the former case the fund produced interest so that no injury was done either to the mortgagor or the mortgagee by the delay in payment off, while in the latter case the policy moneys produce no interest.

(g) This notice is necessary to the exercise of the statutory power of sale under the L. P. Act, 1925, s. 103 (1), and also usually in the case of an express power; but not before suing for the debt unless expressly required by the deed, though in practice a reasonable notice should of course be given. As to the effect of the money being tendered shortly after the expiration of the notice, see *Edmondson v. Copland*, [1911] 2 Ch. 301. As to notice in the case of a mortgage of shares, see *Deverges v. Sandeman*, [1902] 1 Ch. 579; *Stubbs v. Slater*, [1910] 1 Ch. 632. As to the mode of serving the notice, see L. P. Act, 1925, s. 196. There seems to be nothing to prevent the mortgagee from giving this notice notwithstanding that the mortgagor has already given notice of his intention to pay off in six months.

clear months from the service hereof (a), we intend to sell the property subject to such mortgage or such portion thereof as we may think fit. AS WITNESS, &c.

(Signed) B. & C.

To A., mortgagee, of, &c.

I hereby demand of you immediate payment of the sum of £—— owing to me on the security of an indenture, dated, &c., & the interest at the rate of £—— p.c. p.a. from the —— day of —— 19—— owing in respect thereof. Dated, &c.

(Signed) B., mortgagee.

VIII.
The same where money is payable on demand (b).

To A., 1st mortgagee, of, &c.

I hereby give you notice that I have advanced to K., mortgagee, of &c., the sum of £——, the repayment whereof, with interest, is secured by a mortgage, dated, &c., on certain, *give sufficient description of the property*, now in mortgage, to you, or, "on the —— comprised in a mortgage to you effected by a mortgage dated," &c. AS WITNESS, &c.

(Signed) B., 2nd mortgagee.

IX.
Notice by second mortgagee to first mortgagee (c).

To X., mortgagee, of, &c.

TAKE NOTICE that by a transfer, dated, &c., & made, &c., for the consideration therein mentioned, the sum of £—— owing to the said A. on the security of a mortgage, dated, &c., of leasehold premises situate, &c., together with all interest due & to become due in respect thereof, & the securities for the same has been transferred by the said A. to the said B. absolutely, to whom all payments of principal & interest must in future be made. Dated, &c.

(Signed) Y. & Co.,

Solicitors for the said B.

X.
Notice to mortgagee of transfer of mortgage (d).

(a) *I.e.* actual service: *Barker v. Illingworth*, [1903] 2 Ch. 20.

(b) As to what is a sufficient demand, see *Worthington & Co., Ltd. v. Abbott*, [1910] 1 Ch. 588, and the cases collected *ib.* p. 593.

(c) As to the object of this notice in the case of a second mortgage of land, see *ante*, p. 91, note. The notice will exclude the first mortgagee from the protection afforded him by s. 96 (2) of the L. P. Act, 1925, if he hands over the title deeds to a third person on discharge of his own mortgage. If the first mortgage contained no obligation on the part of the mortgagee to make further advances the notice will postpone any further advance made by him after its receipt to the second mortgagee: L. P. Act, 1925, s. 94 (1). As to the effect of notice to one of several joint mortgagees who dies, see *Freeman v. Laing*, [1899] 2 Ch. 355.

Notice of second mortgage.

(d) See *ante*, p. 239, note. A similar notice should be given where the

XI.
Notice of
transfer
of several
mort-
gages.

To the pson named in the first column of the schdle hereto and to all other psons (if any) interested in the right to redeem the ppty shortly described in the second column of such schdle and all other (if any) the ppty comprised in the secy specified in the third column of such schdle.

TAKE NOTICE that by the transfer specified in the fourth column of the sd schdle the sum of £—— owing by you on the secy specified in the third column of such schdle & the intt to become due for the same & the securities for the same, & also the mtged premes were transferred to the transferee named in the fifth column of such schdle & we require you to pay to us on behalf of the sd transferee all intt henceforth to become due in respt of the sd sum. Dated, &c.

The schdle above referred to.

Owner of equity of redemption.	Mortgaged premises.	Security for mortgage debt.		Transfer of same.		Transferee.
		Date.	Parties.	Date.	Parties.	

XII.
Notice by
purchaser
of equity
of re-
demption
to mort-
gagee.

To Mr. —, *mtgee*.

TAKE NOTICE that by a convce dated, &c., the ppty comprised in a mtge dated, &c., & made, &c. [of wch mtge you are or claim to be transferee], has been sold & conveyed to —, subjt to paymt of the ppal sum of £—— seed by such last-mentd mtge. Dated, &c.

(Signed) X., *Pchaser*.

XIII.
Notice
from

To A., *owner or tenant*, of, &c.

I, B., *rent-charge owner*, of, &c., hby give you notice that I have become entitled as *mtgee*, or, “*pchaser*,” by virtue of a convce or

transfer is made by way of sub-mortgage, saying, “to secure the ppal sum of £—— with intt thron” instead of “absolutely.”

As to the necessity of enquiry by the transferee whether the full amount stated in the mortgage was in fact paid, see *ante*, p. 14, note (a).

mtge dated, &c., to a fee-farm rent or perpetual rent-charge of £—— p.a. charged upon the plot of ground & the house thron situate & being, &c., now in your ownership or reputed ownership, or, "tenancy," & payable half-yrly on, *specifying days*, & I require you to pay to me on the —— day of —— next the sum of £——, being the half-yrly instalmt of the sd rent-charge wch will become due on that day, & a similar sum on every —— day of ——, &c. Dated, &c.

(Signed) B.

mort-
gagee or
purchaser
of a rent-
charge to
owner or
tenant of
property
charged.

To A., *tenant*, of, &c.

I, B., *mtgee*, of, &c., hby give you notice that I have become entitled as mtgee by virtue of a mtge, dated, &c., to the receipt of the rent of the house, No. —, —— Street, now held by you under Mr. ——, & I require you to pay to me, or, "to Mr. ——, of ——, on my behalf," the rent now due, & henceforth to become due, in respt throf. AS WITNESS, &c.

(Signed) B.

xiv.
Notice by
mort-
gagee to
tenant to
pay rent
to him
(a).

To A., *tenant*, of, &c.

I, B., *receiver*, of, &c., hby give you notice that by virtue of an apptmt or *where apptmt is in mtge deed*, a mtge, dated, &c., why I was apptd to be recer of the rents & profits of the ppty comprised thrin, I have become entitled to receive the rent of the house No. ——, —— Street, now held by you under a lease, dated, &c., & I require you to pay to me the rent now due & henceforth to become due in respt throf. AS WITNESS, &c.

(Signed) B.

xv.
Notice by
receiver
of mort-
gaged
property
to tenant
to pay
rent to
him.

(a) The tenant cannot set off against the mortgagee's claim for rent, a claim for damages against the mortgagor: *Reeves v. Pope*, [1914] 2 K. B. 284. It is conceived that a puisne mortgagee may now by virtue of his legal term require the tenant to pay rent to him, but that out of such rent he must satisfy the first mortgagee. The right of a mortgagee, which expression includes a puisne mortgagee, to take possession is not affected by the L. P. Act, 1925, but when possession is taken by a mortgagee the legal estate of the mortgagor is not converted into an equitable interest: s. 95 (4). As to the position of the mortgagee where the tenant has paid rent in advance, see *Cook v. Guerra*, L. R. 7 C. P. 132; *Lord Ashburton v. Nocton*, [1915] 1 Ch. 274, and *ante*, p. 66, note (hh).

xvi.
Notice
determin-
ing gua-
rantee(b).

To Messrs. B. & Co., Bankers.

TAKE NOTICE that in psuance of the power conferred on me by the guarantee hrinar referred to, I hby determine & discontinue the guarantee dated, &c., wch I gave to you for paymt of certain moys due or to become due to you by A., of —, & I give you further notice not to make any further advances or paymts to or on acct of, or give further credit to the sd A., or to incur or allow to be incurred any further liability under the sd guarantee. Dated, &c.

(Signed) X., *Guarantor.*

xvii.
Notice by
partner
of his
intention
to retire.

To B. & C., *the other ptners in the firm of A. & Co.*

TAKE NOTICE that in exercise of the power conferred on me by our Articles of Ptnp dated, &c., I intend to retire from the ptnp on the — day of — next. Dated, &c.

(Signed) A.

xviii.
Notice of
expulsion
of a
partner
(c).

To A.

TAKE NOTICE that in exercise of the power conferred on us by our Articles of Ptnp dated, &c. [& of the Deed of Accession dated, &c.] we determine the ptnp so far as you are concerned as from the date of this notice on the ground that, &c., *state cause of complaint.* Dated, &c.

(Signed) B. & C.

xix.
Notice of
dissolu-
tion of
partncr-
ship (d).

NOTICE is hby given that the ptnp lately subsistg betn us, the undersigned A., B., & C., carrying on business as — at — under the style or firm of A. & Co. has this day been dissolved by mutual consent [so far as regards the sd B., who retires from the firm], *or*, “has this day determined by effluxion of time.” [All debts due to, or owing by, the sd late firm will

(b) As to what amounts to a power to the guarantor to withdraw a guarantee, see Vol. I. p. 52.

(c) In the absence of bad faith, the partner serving the notice need not inform his co-partner of the causes of complaint nor give him an opportunity of defending himself: *Green v. Howell*, [1910] 1 Ch. 495.

(d) This notice is for insertion in the *London Gazette*; but before publishing it statutory declarations verifying the signatures and that it is in accordance with the articles of partnership will be required. As to the effect of the notice when published, see P. Act, 1890, s. 36.

be reced & pd by the sd A. & C., who will continue the sd business under the psnt style or firm of A. & Co.] Dated, &c.

(Signed) A., &c.

To A., tenant, of, &c.

I, B., of, &c. [as agent for & on behalf of C., of, &c.], hby give you notice to quit & deliver up posson of the — & premes, situate at —, in the county of —, wch you hold of me [of the sd C.] as tenant, on the — day of — next, or “at the expiron of the yr of your tenancy wch will expire next after the end of one half-yr from the service of this notice (f). [This notice is given for the reasons following, namely:—(1) etc. (g).]

AS WITNESS, &c

(Signed) B.

xx.
Notice to
quit
given by
landlord
to ten-
ant (e).

(e) In the absence of agreement half a year's notice to quit is required in the case of all yearly tenancies, except agricultural tenancies, where a year's notice is required: A. H. Act, 1923, s. 25 (1). A notice to quit an agricultural tenancy is made void by the person giving such notice entering into a contract for the sale of the holding, unless the tenant prior to the contract agrees in writing that the notice shall be good: A. H. Act, 1923, s. 26, and see Vol. I., p. 257, but *secus* if the contract is made by one reversioner after notice to quit given by all: *Rochester, etc., Sewerage Board v. Clinch*, [1925] 1 Ch. 753. As to notices given for the purpose of making certain improvements, see the A. H. Act, 1923, s. 27. Where the reversion to premises let on a single tenancy has been sold in two lots, and the tenant has not recognised the division, a notice to quit given by one purchaser is void *ab initio*, and cannot be cured by a similar notice given by the other purchaser, even if the second notice is given before the date from which a valid notice must run: *Re Bebington's Tenancy*, [1921] 1 Ch. 559. It was held in *Simmons v. Crossley*, [1922] 2 K. B. 95, that a notice to determine a monthly tenancy must be a reasonable notice and need not necessarily expire on the last day of a month, calculated from the commencement of the tenancy; but this view was dissented from by a Divisional Court in *Queen's Club Gardens Estates, Ltd. v. Bignell*, [1924] 1 K. B. 117, where it was decided that in all periodic tenancies the notice to quit should expire at the termination of the period. This latter view was also taken by another Divisional Court in *Precious v. Reedie*, [1924] 2 K. B. 149, where it was further laid down that in a monthly or weekly tenancy the period for which notice to quit must be given must always be regulated by the date and length of the letting unless there is some special agreement. See also *Savory v. Bayley*, 38 T. L. R. 619. As to service by registered letter, see *Van Grutten v. Trevenen*, [1902] 2 K. B. 82, and generally, see Goodeve, R. P., 5th ed., 158. A statutory form of notice to quit applicable to premises falling within the protection of the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, will be found in the first Schedule to the Act of 1920.

(f) This alternative will be used when the day of the commencement of the tenancy is not known: see *Sidebotham v. Holland*, [1895] 1 Q. B. 378.

(g) The words in brackets should be used only in the case of agricultural

xxi.
Notice to
quit
given by
tenant to
landlord
(a).

To A., *landlord*, of, &c.

I, B., of, &c. [as agent for & on behalf of C., of, &c.], hby give you notice, that I shl [he will] quit & deliver up posson of the — & premes situate at, &c., now held by me [him] as your tenant, on the — day of —. AS WITNESS, &c.

(Signed) B.

xxii.
Notice by
landlord
to tenant
demand-
ing pos-
session
after
expiry of
lease.

To A., *tenant*, of, &c.

As solors & agents for & on behalf of X., of, &c., & Y., of, &c., the owners of the house & premes comprised in a lease dated, &c., we hby give you notice that the sd lease expired by effluxion of time on the — day of — last, & we hby demand immediate posson of the sd premes, & also give you notice that you will be held responsible for all damages wch may be sustained by the owners of the sd premes by reason of your wrongfully retaing posson throf, as well as for all

tenancies, and, if applicable, relieve the landlord from payment of compensation for disturbance: See A. H. Act, 1923, s. 12 (1). Where the notice is given in respect of a cottage on the holding, and has been given on account of misconduct, this fact should be stated in the notice: See A. H. Act, 1923, s. 14. An offer to allow the tenant to remain at an increased rent is not a withdrawal of the notice within the meaning of s. 12 (1): *Parrett v. Bennett-Stanford*, [1922] 2 K. B. 592.

(a) As to the notice necessary to determine a periodical tenancy following a fixed term, see *Re Searle*, [1912] 1 Ch. 610. Where the original term was for a year and a fraction of a year, and the tenant holds over, the yearly tenancy thus created can be terminated on the anniversary of the commencement of the holding over: *Croft v. Blay*, [1919] 2 Ch. 343. A yearly tenancy cannot be terminated before the end of the first year even though the agreement provides that notice may be given at any time: *Mayo v. Joyce*, [1920] 1 K. B. 824. A notice to quit containing a claim to cancel it in certain events is a good notice: *May v. Borup*, [1915] 1 K. B. 830; but the events must be clearly ascertainable from the notice itself coupled with the tenancy agreement: *Phipps v. Rogers*, [1925] 1 K. B. 14. Acceptance of rent by a landlord after the tenancy has been determined by due notice is not a waiver of the notice: *Davies v. Bristow*, [1920] 3 K. B. 428, not following *Hartell v. Blackler*, [1920] 2 K. B. 161, and *a fortiori* if the premises fall within the protection of the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925. A notice to quit once given cannot be withdrawn: *Freeman v. Evans*, [1922] 1 Ch. 36; an attempted withdrawal is merely an offer to grant or take a new tenancy on the terms of the old. A question as to the validity of a notice to quit served either by or on a tenant of agricultural land is not one which must be referred to arbitration under s. 16 of the A. H. Act, 1923: *Simpson v. Batey*, [1924] 2 K. B. 666; *Rex v. Powell*, [1925] 1 K. B. 641.

dilapidons weh may be found thrin, & for any breach by you of the covts contd in the sd lease. Dated, &c.

(Signed) &c.

To C., *landlord or tenant, as the case may be.*

IN psuance of a power contd in the lease, dated, &c., under weh the — & premes situate, &c., thby demised are held, I, A., of, &c. [as agent for & on behalf of B.], the owner [of the reversion expectant on the determinon] of the term created by the sd lease, hby give you notice that it is my intention to determine the sd lease & to put an end to the term thby created at the end of the first seven [fourteen] yrs of the sd term. AS WITNESS, &c.

(Signed) A., &c.

XXIII.
Notice by lessor or lessee to determine a 21 years' lease at the expiration of the first 7 or 14 years, pursuant to a power in the lease (b).

To C., *landlord or tenant, as the case may be.*

I, A., of, &c., the owner [of the reversion expectant on the determination] of the term created by a lease dated, &c., and made, &c., hby give you notice that it is my intention to determine the sd lease at the end of the term thereby created. AS WITNESS, &c.

XXIV.
Notice by lessor or lessee to determine an agricultural lease at the end of the term (c).

To A., *tenant, of, &c.*

I, B., *landlord*, of, &c., hby give you notice that Mr. — my surveyor on the — day of — entd upon the messe

XXV.
Notice by landlord to tenant to repair (d)

(b) As to what is sufficient notice, see *Bury v. Thomson*, [1895] 1 Q. B. 231, 696; and as to what length of notice must be given, see *Re Lancashire & Yorkshire Bank*, [1914] 1 Ch. 522. The notice must be given by or on behalf of the legal owner of the lease: *Stait v. Fenner*, [1912] 2 Ch. 504. Notice by one of two joint lessees, if not expressly authorised, is insufficient unless agency is proved or can be inferred from the circumstances: *Re Viola*, [1909] 1 Ch. 244. Cf. *Re Bebington's Tenancy*, [1921] 1 Ch. 559.

(c) In the case of an agricultural lease for a term of two years and upwards the tenancy continues as a tenancy from year to year unless the lease is determined by notice. The notice must be in writing and given not less than one year nor more than two years before the date fixed for the expiration of the term: A. H. Act, 1923, s. 23; *Edell v. Dulien*, [1924] A. C. 38. The section only applies to tenancies created after Dec. 31, 1920.

(d) As to the incidence as between tenant for life and remainderman of expenses incurred in making the tenants repair, see *Re McClure*, 95 L. T. 704: *Re Tubbs*, [1915] 1 Ch. 540, reversed on other grounds, [1915] 2 Ch. 137.

known as — held by you of me under a lease, dated, &c., & examined the condon throf, & found the defects & wants of repair mentd in the schdle hto, & further I require you to repair & make good such defects & wants of repair within — calr months, psuant to the covts of the sd lease. As
WITNESS, &c.

(Signed) B.

The Schdle above referred to.

xxvi.
Notice by
lessor to
lessee to
repair
prepara-
tory to
a re-
entry (a).

To A., lessee, the lessee of the house, bldgs, & premes, situate, &c., comprised in a lease dated, &c., & made, &c., & to all others whom it may concern.

TAKE notice as follows:—

1. By the above-mentd lease the lessee covted, *set out the covt to repair verbatim* (b).

Notice to
lessee
before
re-entry.

(a) The L. P. Act, 1925, s. 146, prevents a lessor from enforcing a forfeiture, even if he can peaceably re-enter: *Re Riggs*, [1901] 2 K. B. 16; for breach of covenant or condition in a lease (except as mentioned in sub-ss. (8) and (9)), unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if it is capable of remedy, requiring the lessee to remedy it (see *North London Land Co. v. Jacques*, 32 W. R. 283), and in any case requiring him to make compensation in money for the breach (unless compensation in money is not required, the meaning of the Act being that if wanted it must be claimed: *Lock v. Pearce*, [1892] 2 Ch. 271, where another form of notice is set out), and the lessee fails within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor. The words "lessor" and "lessee" include an original or derivative lessor and lessee and their respective representatives and assigns; see sub-s. (5); thereby altering the law that an under-lessee was not as between himself and the original lessor a "lessee" within the meaning of the C. Act, 1881, s. 14, or the C. Act, 1892, s. 2 (1): *Burt v. Gray*, [1891] 2 Q. B. 98; *Nind v. Nineteenth Century Bldg. Socy.*, [1894] 2 Q. B. 226. See also *Gray v. Bonsall*, [1904] 1 K. B. 601. The effect of an order for relief against forfeiture is to continue the existence of lease and underlease: *Dendy v. Evans*, [1910] 1 K. B. 263.

The notice is invalid if it states breaches of covenants not contained in the lease: *Guillemard v. Silverthorne*, 99 L. T. 584; but it is valid if some only of the alleged breaches have taken place: *Pannell v. City of London Brewery Co.*, [1900] 1 Ch. 496.

The notice should direct the lessee's attention to the particular breaches

(b) As to relief from forfeiture where the covenant broken refers to internal decorative repairs, and as to the exception to the cases in which relief will be granted: see L. P. Act, 1925, s. 147.

2. The above-mentd covt has been broken, & the parlar breaches wch are complained of are, committg or allowg the dilapidons mentd in the schdle hto.

3. I require you to remedy all the afsd breaches [& to make compenson to me in moy for such breaches].

4. On your failure to comply with this notice within a reasble time, it is my intention to re-enter upon the sd premes & claim damages for breach of the sd covt.

Dated this — day of —.

(Signed) B., lessor.

The Schdle above referred to.

To A., landlord of, &c.

I., B., tenant of, &c., hby give you notice that the messe known as —, held by me of you under a lease, dated, &c., is defective & in want of repair in the followg parlars, namely, *insert parlars of disrepair*, & I require you forthwith to repair the sd messe & make good the defects & wants of repair above mentd psuant to the covts of the sd lease. AS WITNESS, &c.

XXVII.
Notice by
lessee to
lessor to
repair (c).

(Signed) B.

To L., immediate lessor or his bailiff or receiver.

Take notice that I have this day been served with [that it has this day come to my knowledge that] a writ in an action commenced [has been issued] in the K. B. [Ch.] Division of the High Court of Justice *give reference to record A. v. B.*, in wch

XXVIII.
Notice by
under-
lessee of
claim for
eject-
ment (d).

complained of: *Re Serle*, [1898] 1 Ch. 652; *Penton v. Barnett*, [1898] 1 Q. B. 276; but it is not necessary for the lessor to indicate what he requires the lessee to do: *Piggott v. Middlesex C.C.*, [1909] 1 Ch. 134; nor will the notice be invalidated because it reserves to the lessor the right to complain of breaches of covenant not specifically mentioned which may subsequently appear: *Fox v. Jolly*, [1916] 1 A. C. 1, and the cases there cited. A notice remains good after waiver of forfeiture by the acceptance of rent even if partially complied with, and will support an action for the breaches still remaining: *New River Co. v. Crumpton*, [1917] 1 K. B. 762.

As to service of the notice, see L. P. Act, 1925, s. 196.

(c) This notice is necessary where it is the landlord's duty to repair: see *Tredway v. Machin*, 91 L. T. 310; *Torrens v. Walker*, [1906] 2 Ch. 166, but not where the landlord retains and occupies part of the demised premises: *Melles & Co. v. Holme*, [1918] 2 K. B. 100.

(d) The penalty on an underlessee who fails to give notice to his im-

the pltf claims to recover posson of premes situate at — wch were demised by you [X.] to me by an underlease dated —.
(Signed) Undertenant.

xxix.
Notice to
landlord
by tenant
of dam-
age done
by game
(e).

To A., *landlord*, of, &c.

I, B., of —, hby give you notice that I have sustained damage, in respt of wch I am entitled to compenson from you under the Agricultural Holdings Act, 1923, from game done on — Farm, to, *here insert parlars, e.g.,* “a crop of wheat growing on Barleymow,” “a crop of turnips grown on & raised but not yet removed from the 7 acre field,” & I hby authorise you or your agent to enter on the sd land & to inspect the damage. AS WITNESS, &c.

(Signed) B.

xxx.
Notice to
landlord
by tenant
claiming
compen-
sation for
improve-
ments or
damage
done by
game (f).

To A., *landlord*, of, &c

I, B., of —, hby give you notice that I claim £—— as compenson from you under the Agricultural Holdings Act, 1923, in respect of the improvements made by me on — Farm (g) [the damage mentd in a notice dated, &c., given by me to you] the parlars of wch are specified in the schdle hto. AS WITNESS, &c.

(Signed) B.

The Schdle above referred to.

xxxi.
Notice to
landlord
by tenant
claiming
compen-
sation

To A., *landlord*, of, &c.

I, B., of —, hby give you notice of my intention to claim such compenson as I may be entitled to under s. 12 of the A. H. Act, 1923, on quitting — Farm, & I hby authorise you or your agent to enter on the sd farm for the ppose of

mediate lessor of any action brought against him or of which he hears for possession of the premises comprised in the underlease is three times the value of the improved or rack rent of the sub-demised premises: L. P. Act, 1925, s. 145. The improved or rack rent is a rent which might be fairly agreed between the parties at the date of the writ, and is not necessarily the actual rent reserved: *Clocker v. Fothergill*, 2 B. & A. 652. As to proceedings in the County Court, see Foà L. & T., 6th ed., p. 892.

(e) See A. H. Act, 1923, s. 11.

(f) See A. H. Act, 1923, s. 11. A tenant cannot claim compensation for improvements which he was bound to make under the terms of his tenancy where that tenancy began before 1st January, 1921: *Huckell v. Saintley*, [1923] 1 K. B. 150.

(g) See Agricultural Holdings Act, 1923, s. 5.

making a valuation of my househd goods, implemts of husbandry produce, & farm stock, on or used in connection therewith. for disturbance (h).
Dated, &c.

(Signed) B.

To A., *pchaser*, of, &c.

TAKE notice, that B., of, &c., the vendor of the freehd este & ppty situate at, &c., contracted to be pchased by you by an agrmt dated the — day of — last, is willg & ready to execute & to cause & procure all other necy pties (if any) to concur in a pper convce to you, or orwise as you may direct, of the fee simple of the premes comprd in the sd contract acedg to the condons & stipulons thrin contd, & that the vendor now calls upon & requires you witht further delay to tender such convce for execution, & pay the remr of the purchase or conson moy, togr with such intt for the same as may be payable, & further, that the vendor will hold you liable to make good to him such loss, costs, damages, & expses, as may be incurred by him by reason of your default in performg the sd contract. As WITNESS, &c.

XXXII.
Notice from vendor's solicitor to purchaser to complete purchase.

(Signed) C., *Vendor's solor*.

Witness.

To A., *purchaser*, of, &c.

Psuant to condon—under weh — Farm was offered for sale on the — day of — (at weh sale you pchased lot —) I hby give you notice that I shl annul the sale to you at the expiron of 10 days (a) from the receipt of this notice by you unless in the meantime you shl withdraw the requisition that you have made requiring me to, *here state the requisition*, weh requisition I am unwilling to comply with on the ground of expse, or as the case may be. Dated, &c.

XXXIII.
Notice that vendor will annul the sale unless the purchaser withdraws requisition.

(Signed) V., *Vendor*.

(h) See A. H. Act, 1923, s. 12 (7) (a) and (b). See *Hamilton Gell v. White*, [1922] 2 K. B. 422. A tenant cannot claim one year's rent as compensation for disturbance unless he has actually suffered some loss, but if he has suffered loss he need not prove it up to the equivalent of one year's rent: *Minister of Agriculture v. Dean*, [1924] 1 K. B. 851.

(a) The number of days mentioned in the notice must be that stated in the condition. As to the circumstances in which a vendor may rescind under the usual provisions in that behalf, see Vol. I., pp. 258 *et seq.*

xxxiv.
Notice to
lord of
manor to
ascertain
compen-
sation (a).

To X., *lord of the manor of* —.

Take notice that I require you to ascertain the amnt & nature (b) of the compenson to be paid by me in respt of the extinguishmt of the manorial incidents now affectg the ppty mentd in the schdle hrto wch is held by me as tenant in fee simple & was formerly copyhd of the sd manor. In the event of failure to agree the sd compenson betwn us I shl apply to the Minister of Agriculture and Fisheries for the appntmt by him of a valuer to ascertain the sd compenson psuant to the Manorial Incidents (Extinguishment) Rules, 1925 (c).

Schedule (d).

(Signed) late Tenant of Manor.

xxxv.
Notice by
tenant for
life to
trustees
of inten-
tion to
sell, &c.,
under
S. L. Act
(c).

To A. & B., the trees, & to Messrs. C. & D., the solors to the trees, of a settlemt dated, &c., & made on the marre of E. & F. his wife, *or*, "the will dated, &c., & proved, &c., of X. deced."

I HBY give you notice that it is my intention under the

(a) By s. 138 (1) (b) of the L. P. Act, 1922, a tenant may at any time after the 1st January, 1926, serve a notice on the lord of the manor in order to procure the discharge of manorial incidents. The lord may, after the 31st December, 1930, serve a similar notice on the tenant. If no notice is served by either side and no compensation agreement made, the manorial incidents are automatically extinguished on the 1st January, 1936; s. 138 (1) (c); except where the period has been extended by the Minister of Agriculture under the proviso to s. 138. The ascertainment of compensation where the period of ten years allowed for settling compensation by agreement has run out is regulated by s. 140. Where the manor is settled land, see S. L. Act, 1925, s. 62.

(b) The compensation will be either a gross sum or a terminable rent-charge. As to fixing the amount, see s. 139 and the below-mentioned rules of 1925.

(c) See Rule 2 of S. R. & O. No. 810 of 1925.

(d) The notice may be served in respect of more than one tenement held of the same manor if held for the same estate and subject to the same trusts and incumbrances (if any). Where the lord has served a notice in respect of one tenement only, the tenant may serve a counter notice in respect of all or any tenements held by him of the manor subject as above stated: s. 138 (2).

Notice to
trustees
under S.
L. Act.

(e) See S. L. Act, 1925, s. 101. Sub-s. (2) of s. 101 declares that notice of a general intention to sell, exchange, or lease is sufficient; but it must be considered doubtful whether a notice once given will remain effectual for any length of time, notwithstanding subsequent changes in the trustees or their solicitors: see *Vaizey on Settlements*, 712; and the sub-section does not apply to mortgages and charges, as to which the decision in *Re Ray's S. E.*, 25 Ch. D. 464, is still in force. On a new tenant for life succeeding, a fresh notice must undoubtedly be given. The notice must be given

powers of the S. L. Act, 1925, to sell, or, "lease" (f), as the case may be, the ppty described in the schdle hto being pt of the ppty comprd in or subj't to the above-mentd settlem't, or "will." Dated, &c.

(Signed) D., tenant for life.

The Schedule above referred to.

To A. & B., &c., as in last form.

As solors for & on behalf of D., of, &c., we hby give you notice that it is the intention of the sd D., by virtue of the powers vested in him by the S. L. Act, 1925, as tenant for life of the — Este, in the parish of, &c., & county of, &c., under the above-mentd settlem't [will] to enter into a contract with X., of, &c., & Y., of, &c., for the sale or grt to them of a piece of land situate, &c., formg pt of the sd — Este, & for carryg out certn arrangem'ts with respt to bldg upon pt of the sd — Este, & the makg of roads through the lands & ppty afsd, & for securg to the owners of the sd — Este & the sd X. & Y. rights of way & other easem'ts & rights over such roads, & for other incidental pposes. Dated, &c.

(Signed) A. & Co.,

Address.

Solors for the sd D.

XXXVI.
Notice by
solicitors
of tenant
for life to
trustees
of inten-
tion to
exercise
powers of
S. L. Act.

To A., of, &c., the tenant for life in posson of the ppty settled by, *settlem't or will*.

WE, X., of —, & Y., of —, the trees [appted by the Court on the — day of —] of the above-mentd settlem't [will] for the pposes of the S. L. Act, 1925, psuant to the power for this ppose given to us by section 101 of the sd Act,

XXXVII.
Waiver
by trus-
tees of
settle-
ment or
will, of
notice
under S.
L. Act
(a).

to the trustees' solicitors as well as to the trustees themselves, and may of course be given by the solicitor of the tenant for life on his behalf, but by sub-s. (4) the trustees may waive notice. Unless the trustee is a trust corporation the number of the trustees must not be less than two. As to notice generally, see *post*, *sub-vit*. SETTLEMENTS (REAL). As to waiver of notice, see note to the next form.

(f) A lease not exceeding 21 years at rack rent whereby the lessee is not made punishable for waste may be granted without notice: S. L. Act, 1925, s. 42 (5) (i) (a).

(a) See S. L. Act, 1925, s. 101 (4). It should be noted that the power

hby waive generally the notice by the sd Act required to be given to us & our solor of your intention to make any sale, exchange, partition or lease under the powers of the sd. Act, or “ We, &c., hby agree to accept the notice dated, &c., given by you to us of your intention, &c., although less than one month, as sufficient.” AS WITNESS, &c.

(Signed) X. & Y.

xxxviii.
Adver-
tisement
of change
of sur-
name to
be pub-
lished in
a news-
paper (b).

I, A. B., *old surname*, of —, in the coy of —, hby give notice that [in compliance with the will of X., of, &c., Esq., deced, dated, &c., & proved, &c.] I have assumed & intend henceforth upon all occasions & at all times to sign & use & be called & known by the surname of C. [only,] in addition to [in lieu of & substiton for] my psnt surname of B., & that such intd change or assumption of name is formally declared & evidenced by a deed poll under my hand & seal, dated this day, & intd to be forthwith enrolled in the Central Office of the Supreme Ct of Judicature. In testimony whrof I hby sign & subscribe myself by such my intd future name. Dated, &c.

(Signed) A. [B.] C.

Witness, X. Y., of, &c.

xxxix.
Statutory
notice to
creditors
(c).

NOTICE is hby given psuant to the Trustee Act, 1925, that all psons havg any claims or demands upon or against the este of K., late of —, in the county of —, deced (who died on

of waiver does not extend to mortgages, or to any dealings except sales, exchanges, partitions, and leases. The power to waive notice to the solicitor is implied, the object of giving notice to the solicitor being presumably merely to ensure its reaching the trustees; otherwise the power of waiver would be nugatory. But *quære* whether the trustees can waive notice to future trustees; and whether a *sole* trustee, other than a trust corporation, to whom notice would not suffice, under s. 94, can waive notice.

Change of
surname.

(b) A man may change his surname as often as he likes without any formalities: Norton on Deeds, 178; but the change is now very commonly evidenced by a deed poll enrolled in the Central Office, accompanied by an advertisement in the newspapers, unless it takes place in compliance with a condition in a will or settlement, requiring some other mode of assumption. The deed poll may follow the wording of the advertisement. Information as to change of surname by Royal licence may be obtained from the College of Arms, Queen Victoria Street, E.C.4. The restrictions imposed by the Aliens Restriction (Amendment) Act, 1919, ceased to operate after the 31st December, 1925.

(c) See T. Act, 1925, s. 27, extending to trustees of a settlement, or of a

the — day of —, & whose will was proved by —, of, &c., the sole exor thrin named, on, &c., in, or, "admon of whose este was grted to —, of, &c., on the — day of —, by" the — Probate Registry) [agst the ppty subqt to a settlemt dated & made, &c., being a settlemt made in the marre of A. of — and B. of —] are hby required to send in the parlars of their debts or claims to the sd exor or admor [trees] at the offices of the undersigned, his solors, on or bfe the — day of —; And notice is hby also given, that after that day the sd exor or admor [trees] will proceed to distribute the assets of the sd K., deced [ppty subj to the trusts of the sd settlemt], amongst the pties entitled thto, havg regard only to the claims of which he [they] shl then have had notice, & that he [they] will not be responsible for the assets, or any pt throf, so distributed, to any pson of whose debt or claim he [they] shl not then have had notice. Dated, &c.

(Signed) A. & B.,
Solors for the sd exor or admor [trees]

I, A. B., of &c., hby give notice that I will not be responsible for any debts incurred or to be incurred by my wife C. D.

XL.
Notice
by a
husband
repudi-
ating
liability
for his
wife's
debts (*d*).

disposition on trust for sale, the benefits previously enjoyed under the Law of Property (Amendment) Act, 1859, s. 29, by personal representatives only. At least two months must be allowed to creditors or beneficiaries within which to make their claims.

As to the effect of an assent by a personal representative, see A. E. Act, 1925, s. 36. Except in favour of a purchaser of a legal estate (defined in s. 55 (1) (xvii)) an assent or conveyance under s. 36 does not prejudice the right of a personal representative or any other person to recover the estate or interest to which the assent relates, or to be indemnified thereout against any liability to which the estate or interest would have been subject if no assent or conveyance had been made: s. 36 (9). A personal representative may require security against any such liability before giving an assent or executing a conveyance, but he may not postpone giving it merely because of the existence of liabilities to discharge which reasonable arrangements have been made: s. 36 (10). An assent may be given subject to any legal estate or charge by way of legal mortgage: *ibid*.

(*d*) Marriage in itself gives no authority to a wife to pledge her husband's credit: *Debenham v. Mellon*, 6 App. Cas. 24; but cohabitation raises a presumptive authority in the wife to contract for her husband in all domestic matters usually entrusted to a wife to an extent suitable in kind, sufficient in quantity, and necessary in fact according to the condition in which they live. This presumption is one of fact, not of law. The husband can negative this responsibility by proving (1) that he expressly warned the tradesman not to supply goods on credit, or (2) that the wife was already

[lately] of the same address [but now residing at ——], and that she has not, nor has she ever had my authority to pledge my credit.

(Signed) A. B.

sufficiently supplied with the kind of goods in question, or (3) that the wife had a sufficient allowance or means to buy the goods without pledging the husband's credit, or (4) that he expressly forbade his wife to pledge his credit, or (5) that the order, though for necessities, was extravagant having regard to the smallness of his income. If the husband neglects to supply his wife with the actual necessities of life she can pledge his credit for such necessities. See *Miss Gray, Ltd., v. Earl Cathcart*, 38 T. L. R. 562, and cases there cited.

PARTNERSHIP (*a*).

CLAUSES (*b*).

CONSTITUTION, DURATION, &c.

1. THE SD A. & B. will become & remain ptners in the trade, or, "profession," or business of —, [in continuon of the business carried on for many yrs by the sd A.] from the — day of —, durg the term of — yrs *or, if for life*, "durg their joint lives" under the style or firm of — [subjt nevertheless to determinon as hrinar provd].

Duration and style of partnership for two partners (*c*).

2. THE SD A., B., C., & D., & the survors of them, will become & remain ptners in the trade, or, "profession," or business of — [in continuon of the business carried on for many yrs by the sd A. & B.], from the — day of —, durg the term of — yrs, if they or any two or more of them shl so long live, *or, if for life*, "durg so long as they or any two or

The same for three or more partners (*c*).

(*a*) See Lindley on Partnership; Pollock on Partnership; Elph. Introd., 7th ed., 355. The law on this subject was amended and codified by the P. Act, 1890, with a provision (s. 46) that the rules of law and equity were to continue in force except so far as inconsistent with that Act; and has been further amended by the Limited Partnership Act, 1907, enabling the formation of limited partnerships in the manner and subject to the conditions therein provided, with a provision (s. 7) that, subject to the provisions thereof, the earlier Act and the rules of law and equity, except so far as inconsistent with the earlier Act, are to apply to limited partnerships. The material provisions of these Acts are referred to *infra*, in the appropriate places. See further as to the Limited Partnership Act, 1907, Lindley, 8th ed., 886. As to what constitutes a partnership, see Vol. I., p. 28, note.

(*b*) The forms under this head are, for the most part, adapted to a partnership between three or more; the alterations for two partners will be obvious.

(*c*) The P. Act, 1890, s. 33 (1), provides that a partnership shall be dissolved as to all the partners by the death or bankruptcy of any partner, subject to any agreement between them; but the death or bankruptcy of a limited partner will not dissolve a limited partnership: see Limited Partnership Act, 1907, s. 6 (2).

Dissolution on death or bankruptcy.

As to the lunacy of a partner, see the Lunacy Act, 1890, ss. 119, 341; the P. Act, 1890, s. 35; the Limited Partnership Act, 1907, s. 6 (2), and as to a partner becoming temporarily insane, see *J. v. S.*, [1894] 3 Ch. 72.

Lunacy.

more of them shl live " under the style or firm of — [subj nevertheless to determinon as hrinar provd].

Registra-
tion of
firm
under
Registra-
tion of
Business
Names
Act, 1916
(x).

3. THE firm shl be registered under the Registration of Business Names Act, 1916, in the manner and within the time directed by that Act, and if at any time any change is made or occurs in the particulars required to be furnished for the purpose of such registration, a statement specifying the nature & date of such change & signed by all the ptners shl forthwith be furnished to the Registrar in compliance with s. 6. of the same Act.

Descrip-
tion of
partners
as limited
and
general.
Registra-
tion of
partner-
ship
under
L. P. Act,
1907 (a).

4. THE SD A. shl be a limited ptnr & the sd B., C., & D. shl be genl ptners within the meaning of the Limited Partnership Act, 1907.

5. THE PTNP shl in due course be registered as a limited ptnp psuant to the provons in that behalf contd in the Limited Partnership Act, 1907, & if at any time during the continuance of the ptnp any change is made or occurs in the particulars required to be furnished for the purpose of such registron, a statemt specifying the nature of such change & signed by the firm shl forthwith be furnished to the Registr in compliance with s. 9 of the same Act. [Until registron of the ptnp as afsd the business of the ptnp shl not be commenced.]

(x) See the Registration of Business Names Act, 1916, ss. 1 and 3. In addition to the penalty for default in registration imposed by s. 7 on every partner in the firm, it is provided (s. 8) that where a firm has made default in registering, the rights of the firm under any contract made during the period of default (see *Re A Debtor* (No. 5), 89 L. J. K. B. 40), shall not be enforceable, i.e., by the firm (see *Daniel v. Rogers*, [1918] 2 K. B. 228; *Hawkins v. Duché*, [1921] 3 K. B. 226), by action or otherwise, unless on application to the court for relief against this disability, such relief is granted, or proceedings to enforce the contract against the firm are commenced by another party to the contract. The court has power to grant relief under the section, notwithstanding that an action has already been commenced (see *Hawkins v. Duché*, *supra*), on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief: *Weller v. Denton*, [1921] 3 K. B. 103. As to whether furnishing insufficient particulars is default within the meaning of s. 8 of the Act, see *O'Connor v. Ralston*, [1920] 3 K. B. 451, at p. 457.

State-
ment
under
Limited
Partner-
ship Act,
1907.

(a) See the Limited Partnership Act, 1907, ss. 5 and 8. The statement to be transmitted to the registrar by means of which registration is effected must specify among other things the sum contributed by each limited partner, and whether paid in cash or how otherwise, and the contribution is to be made (s. 4 (2)) at the time of entering into the partnership. Although it follows that registration cannot be effected prospectively of an intended partnership, there appears to be nothing either in the Act or the Rules made under the Act, [1908] W. N. pt. 2, p. 1, to prevent

6. ANY PTNER may determine [retire from] the ptnp on or at any time after the — day of —, 19—, on givg not less than six calr months' previous notice in writg to the other ptnrs or ptnr of his intention in that behalf, & at the expiron of such notice the ptnp shl determine accordgly [so far as regards the ptnr givg such notice].

Power to determine or retire from partnership by notice (b).

7. THE SD A. & B., or such one of them as shl for the time being remain a ptnr, may at any time compulsorily retire the sd C. from the firm (d) on givg to him not less than — calr months' notice in writg of their or his intention in that behalf, [or on paying him the sum of £— in lieu of such notice,] & at the expiron of such notice, [or on the paymt of such sum, as the case may be,] the sd C. shl cease to be a ptnr.

Power to compel retirement of one partner (c).

8. DURING the period of — yrs from the date hrof the sd C. shl be a probationary ptnr & accordgly the other ptnrs or such one of them as shl for the time being remain a ptnr may dismiss him from the firm on giving him not less than one calr month's written notice expiring on or bfe the expiron of the sd period, & at the expiron of such notice the ptnp shl be determined as regards the sd C.

Power to dismiss probationary partner.

9. If any [genl] ptnr shl at any time durg the continuee of the ptnp commit or be guilty of any breach of any of the

Power of expulsion in case of

registration from being effected at any time after the share of capital to be contributed by the limited partner or partners has been paid (if contributed in cash) to the credit of the partnership, or has been appropriated (if contributed in money's worth) to the use of the partnership. It is of the utmost importance, in view of the provisions of s. 5 of the Act, that registration should in no case be delayed until after the commencement of the partnership business.

(b) By the P. Act, 1890, s. 32, a partnership is (subject to any agreement) dissolved, if entered into for a fixed term, by the expiration of the term; and if for an undefined term by any partner giving notice of dissolution to the others; and see also s. 26. A partnership made determinable "by mutual arrangement only" is treated as a partnership during the joint lives of the partners, subject to mutual arrangement, and is not determinable by notice by one partner against the will of the other: *Moss v. Elphick*, [1910] 1 K. B. 846. By the L. P. Act, 1907, s. 6 (5) (e) a limited partner (subject to any agreement) is not entitled to dissolve the partnership by notice. Dissolution may be decreed by the Court in the cases mentioned in s. 35 of the earlier Act: see *Re Hughes & Co.*, [1911] 1 Ch. 342.

Dissolution by notice.

(c) See *Russell v. Russell*, 14 Ch. D. 471; and note (f), *post*, p. 344.

(d) If preferred, say "terminate the sd ptnp so far as regards the sd C."

breach
of duty,
&c. (f).

provons or stipulons contd in clauses — & — hrof or any other flagrant breach of his duties as a ptner, or shl fail to acct for & pay over or refund any moys for wch he is accountable to the ptnp within — days after being required so to do in writg by any other ptner, or shl act in any other respt contrary to the good faith wch ought to be observed betn ptners, or shl suffer his share of the ptnp ppty to be charged for his separate debt (g), or enter into any composon or arrangemt with or for the benefit of his credors [or shl become addicted to bettg (h), or gamblg of any kind, or speculatg on the Stock Exchange or orwise, or to notorious intemperance or immorality or other scandalous conduct detrimental to the ptnp business, (i) or shl become permanently incapacitated by lunacy (k), ill-health, accident, or orwise from attendg to the sd business, or shl absent himself from the sd business for more than — calr months in any one yr or for more than — consecutive days], then & in any such case the other ptners or ptner may by notice in writg expel the ptner so in default as afsd from the firm & publish a notice of dissolution of the ptnp in the name of & as against such ptner, whrupon the ptnp shl immedly cease & determine accordgly so far as regards such ptner witht prejudice to the remedies of the other ptners or ptner for any antecedent breach of any of the stipulons or agrmts afsd. Provd that if any question shl arise as to whether a case has happened to authorise the exercise of this power such question shl be referred to arbitron.

Provision
for con-
version of

10. THE SD A. may retire from active participon in the conduct & managemt of the ptnp business, & shl be entitled to

Ex-
pulsion.

(f) No majority of the partners has any power of expulsion without express agreement: P. Act, 1890, s. 25. Before expelling a partner the partners need not inform him of what they complain of, nor give him an opportunity of explanation: *Green v. Howell*, [1910] 1 Ch. 495. In the absence of express provision an expelled partner will not be restrained from carrying on business in competition with the firm: *Dawson v. Beeson*, 22 Ch. D. 504; see *post*, p. 371, form 18 (iv.).

(g) See P. Act, 1890, s. 33 (2); Limited Partnership Act, 1907, s. 6 (5) (c). As to bankruptcy, see *ante*, p. 341, note (c).

(h) A partnership formed for the express purpose of carrying on a betting or bookmaker's business is not impossible in law or *per se* illegal: *Jeffrey v. Bamford*, [1921] 2 K. B. 351.

(i) As to professional misconduct, see *Clifford v. Timms*, [1908] A. C. 12; *Re A Solicitor*, [1912] 1 K. B. 302.

(k) See *ante*, p. 341, note (c).

become a limited ptner on or at any time after the — day of —, on giving not less than — calr month's previous notice in writing to the other ptners of his intention in that behalf, in wch case the ptnp shl not be determined, but at the cost of the firm all proper steps (b) shl be taken, advertise- mts issued (c) & statemts made & signed by the ptners, with a view to registron of the ptnp as a limited ptnp under the Limited Partnership Act, 1907, consistg of the sd A. as limited ptner, & the other ptners or ptner as genl ptners or ptner, & at the expiron of such notice the ptnp shl be registered accordgly, & the business of the ptnp shl thenceforth during the residue of the sd term be carried on subjt to the provons of these psnts so far as applicable to a limited ptnp.

partner-
ship into
limited
partner-
ship (a).

11. THE SD B. shall be entitled to become a limited instead of a genl ptner at any time after the — day of — on giving not less than — calr months' previous notice in writing to the other ptners of his intention in that behalf. Immedly upon the receipt of any such notice all pper steps (d) shl be taken, valuations made & advertisemts issued (d) with a view to carrying into effect the proposed change, & at the expiron of such notice a statemt specifying the nature of such change & signed by the firm shl forthwith be furnished to the Registrar in compliance with s. 9 of the Limited Partner- ship Act, 1907.

Option to
general
partnerto
become
limited
partner.

12. THE SD A. may become a genl instead of a limited ptner at any time after the — day of — on giving not less than one calr month's previous notice in writing to the other ptners

Option to
limited
partner
to be-
come
general
partner
(e).

(a) For a clause providing for the representatives of a deceased partner succeeding to his share in the business as limited partners, see *post*, p. 368, note (c).

(b) The amount contributed by the limited partner will be the actual amount or value of his share in the capital of the old partnership at the time of enter- ing into the limited partnership. In making the statement required by s. 8 of the Limited Partnership Act, 1907, it must be borne in mind that the actual value is not necessarily the nominal value, and, having regard to the penalty imposed by s. 12 of that Act for knowingly making a false statement, care should be taken to arrive at a true estimate of the actual value of the share by means, if necessary, of a general account of the assets and liabilities of the firm.

(c) See Limited Partnership Act, 1907, ss. 10, 17, and the Limited Partnership Rules, 1907, f. 4.

(d) See note (b), *supra*.

(e) See *post*, p. 395, note (b).

of his intention in that behalf & at the expiron of such notice a statemt specifying the nature of the change thereby effected & signed by the firm shl forthwith be furnished to the Registrar in compliance with s. 9 of the Limited Partnership Act, 1907.

Exclu-
sion of
s. 33 (1)
of the P.
Act, 1890.
Place of
business.

Certifi-
cate of
registra-
tion, &c.

13. THE DEATH or bkey of any ptner shl not dissolve the ptnp as regards the remaing ptners.

14. THE BUSINESS of the firm shl be carried on at — or at such other place as the ptners shl from time to time determine.

15. THE CERTIFICATE of registron of the firm shl be kept exhibited in a conspicuous position upon the business premes in compliance with s. 11 of the Registration of Business Names Act, 1916; & the names of the ptners shl in compliance wth s. 18 of the same Act be written or printed on all catalogues, circulars, showcards, & letters of the firm, on or in which the firm-name appears.

FINANCIAL PROVISIONS OF THE PARTNERSHIP.

(i.) CAPITAL.

Contri-
bution to
capital
in equal
shares.

1. THE CAPL of the firm shl be the sum of £—, wch shl be contributed by & credited in the books of the firm as belongg to the ptners in eql shares. Each such contribution to capl shl [except as orwise hrinar provd in regard to pt of the contribution of the sd A.(f)] be made by the contributing ptner by cash paymt into the — Bank Ltd. to the acct of the firm on or bfe the — day of —.

The
same in
unequal
shares.

2. THE CAPL of the firm shl be the sum of £—, wch shl be contributed by (g) [& credited in the books of the firm as belongg to (a)] the ptners in the shares or propor- tions followg, namely, the sum of £— [being — eql — pt[s] throf] [shl be contributed] by [& belong to] the

(f) See form 6 *infra*.

(g) Where one partner is to contribute nothing in either cash or property, say “contributed by A. & B. in the shares, &c.,” adding at the end of the clause, “but no pt of the sd capl shl be contributed by the sd C.” Any sum contributed as capital by a limited partner must be paid to the account of the firm at the time of entering into the partnership: Limited Partnership Act, 1907, s. 4 (2).

(a) If either of forms 4 or 12 is used, the words in brackets having reference to the shares in which the capital is to be owned will be omitted throughout.

sd A., the sum of £—— [being —— eql —— pt[s] throf] [shl be contributed] by [& belong to] the sd B., & the sum of £—— [being —— eql —— pt[s] throf] [shl be contributed] by [& belong to] the sd C. Each such contribution, &c., as in form 1.

3. THE CAPL of the firm shl be the sum of £——, wch shl be contributed by & credited in the books of the firm as belongg to the ptnrs in the shares in wch they are to share in the profits as hrinar mentd. Each such contribution, &c., as in form 1.

The same in shares proportionate to shares of profits.

4. THE SD capl shl belong to & shl be credited in the books of the firm as belongg to the sd ptnrs in the shares or proportions followg, namely, the sum of £—— [being —— eql —— pt[s] throf] to the sd A., the sum of £—— [being, &c.] to the sd B., & the sum of £—— [being, &c.] to the sd C.

Shares in which capital is to be owned (b).

5. THE CAPL of the firm shl consist of such sum or sums of moy as shl from time to time be required for carrying on the sd business with advantage, & shl be contributed by & credited, &c., in such shares as may from time to time be agrd upon.

Capital where no amount fixed.

6. THE STK-IN-TRADE & plant belongg to the sd business at the commencemt of the ptnp [the parlars whrof are entered in the books of the sd business, or, "in the schdle hto"] shl become the ppty of the firm & shl be taken over & adopted by the firm at the sum of £——, or, "at a valuation to be made by Messrs. ——," or, "a competent valuer," as pt of the capl to be contributed by the sd A.

Stock-in-trade, &c. to be taken at a valuation.

7. THE SD A., by whom the house & offices in wch the sd business is carried on are held for the residue of a term of —— yrs from the —— day of —— granted by a lease dated, &c., at a rent of, &c., shl stand possessed throf in trust for the firm, & shl be indemnified by the firm against such rent &

Lease of business premises vested in one partner to be held in trust for firm (c).

(b) Where one partner is admitted into the firm in consideration of his business connection, abilities, or special knowledge in reference to the business to be carried on, while the whole or larger part of the capital is contributed in cash or property by the remaining partners, or where, as in form 8, p. 348, a sole trader or an old firm takes into partnership a junior partner in consideration of a premium, it is especially important that the shares in which the capital is to be owned should be stated in the Articles, and credited accordingly in the books of the firm.

(c) By the P. Act, 1890, s. 22, land which is partnership property is, unless the contrary intention appears, to be treated as between the

the covts & condons contd in the sd lease (d). The benefit of the sd lease shl be taken by the firm, &c., *as in form 6*.

Provision where capital consists wholly of the assets and liabilities of an old business.

8. THE FREEHD & leasehd ppty & assets belongg to [the sd business lately carried on by] the sd A., *senior ptner*, the parlars whrof are specified in the first pt of the schdle hto, shl become & be ppty & assets of the firm, & the mtge & other debts & liabilities mentd in the second pt of the sd schdle shl become & be debts & liabilities of the firm. The sd A. shl be credited in the books of the firm with the sum of £—— (being two eql fourth pts of the net value of the sd ppty & assets, after deductg the sd debts & liabilities) as so much capl brought in by him, & each of them the sd B. & C., *junior ptners*, shl in conson of the paymt by him to the sd A. of the sum of £—— (being one other fourth pt of the sd net value) as a premium for his admittee into the sd ptnp be credited with that amt as so much capl brought in by him. The sd A., his exs, or ads, shl if & when required so to do at the cost of the firm duly convey, assn, or orwise assure the sd freehd & leasehd pptyes in such mner as effectually to vest the same subjt to the mtges & charges affectg the same in the four senior ptners for the time being in joint tenancy upon trust for sale & as pt of the ptnp este, & in the meantime & until such convces or other assurances as afsd shl have been made & executed shl hold the same premes in trust for the firm (a).

Provision for house of business and office furniture

9. THE FREEHD house, offices & bldgs at ——, in wch the sd business is now carried on, & the office furniture & fittgs thrin wch are resply the ppty of the sd A., shl so remain, & shl not in any way be deemed to be assets of the ptnp, but the firm shl

Land whether converted into personality.

partners or their representatives as personalty. The question whether, apart from the Act, there is a conversion, depends on the agreement of the parties: *Re Wilson*, [1893] 2 Ch. 340; Lindley, 8th ed., 406. The doctrine of conversion is of no importance in the case of a death after the 31st December, 1925, since all property real and personal devolves upon the personal representative and is held by him, in the case of an intestacy, upon the same trusts: A. E. Act, 1925, ss. 2, 33.

(d) See *Mathews v. Ruggles-Brise*, [1911] 1 Ch. 194.

(a) See L. P. Act, 1925, ss. 34 (2), 36 (1), and Vol. I. p. 505. In order not to make the partnership deed part of the title, it would be better, if possible, to convey the freeholds and leaseholds to the partners by a separate deed reciting the formation of the partnership but not referring to this deed. By the P. Act, 1890, s. 20 (2), the legal estate in any land belonging to the partnership is to devolve according to the ordinary rules of law, but in trust as far as necessary for the persons interested under the agreement of partnership.

have the right of retaining & using the sd house, bldgs, furniture, & fittgs, for the pposes of the sd business durg such period as the ptners for the time being shl think fit, & shl durg such period pay all rates, taxes, & outgoings payable in respt throf & shl keep the same insured & in tenantable repair, & shl also pay a rent of £—— p.a. to the sd A., & his assns, for the use of the sd house, bldgs, furniture & premes.

remain-
ing pro-
perty of
one part-
ner, sub-
ject to
the user
thereof
by the
firm at a
rent (b).

10. IF AT any time or times hrafter it shl be determined [by a majority of the ptners] to increase the capl of the firm, the additional capl required shl, unless orwise agrd, be advanced by the [general] ptners in eql shares [in the proportions in wch they shl for the time being be entitled to the net profits of the sd business]. [Provd that the cost of stamping any statemt made upon any such advance in compliance with s. 9 of the Limited Partnership Act, 1907, shl be borne by the firm.]

Increase
of capital
(c).

11. EACH PTNER shl be credited in the books of the firm with intt at the rate of £—— p.c. p.a. on his share of the capl for the time being, or, “on the excess of his capl for the time being over & above the sum of £——,” inclusive of any further capl wch may hrafter be brought in by him with the consent of the other ptners, & such intt shl be pd to him on the —— day of —— in every yr bfe any division of profits is made.

Interest
on capital
(d).

12. EACH PTNER shl be credited in his capl acct with the ptnp with the amt or value of the capl origly or subseqtly contributed by him as at the date of the same being so contributed, & each ptner shl be entitled to intt at the rate of £—— p.c. p.a. on the sum from time to time standg to his credit in his capl acct with the ptnp, such intt to be considered as payable qtrly on the usual qtr days.

The same
another
form (d).

13. IF ANY ptner shl at any time or times advance to or for

Loans by
partners
to the
firm (e).

(b) Where a leasehold house belonging to one partner is occupied by the firm and the rent is paid out of the partnership property, the presumption is that the tenancy is to last during the partnership: *Pocock v. Carter*, [1912] 1 Ch. 663. The above clause seems to render the agreement chargeable with a lease stamp of ten shillings: see Stamp Act, 1891, *sub-tit. LEASE* (4).

(c) If any additional capital is subscribed by a limited partner, a statement of the change must be forwarded to the registrar pursuant to the Limited Partnership Act, 1907, s. 9.

(d) In the absence of agreement no partner is entitled to interest on capital subscribed by him before the ascertainment of profits: P. Act, 1890, s. 24 (4).

(e) By the P. Act, 1890, s. 24 (3), subject to any agreement to the contrary,

the use of the firm any sum or sums beyond the amt of capl wch he has agrd to subscribe, or with the consent of the [majority of the] other ptners leave in the business any pt of the net profits carried to his credit at any annual genl acct, the same shl be considered as a debt due to him from the firm & shl bear intt at the rate of £—— p.c. p.a., payable half-yrly, but any such advance or share of undrawn profits shl not be called in or withdrawn by the ptner making or leaving the same wtht givg — calr months' written notice of his intention so to do to the other ptners, & he shl be bound to accept repaymt of or to withdraw the same on a like notice being given to him by the other ptners, & at the expiron of such last-mentd notice intt shl cease to be payable thron.

(ii.) PROFIT AND LOSS.

Incidence
of out-
goings.

14. THE RENT of, & expses of repairs, alterons, & improve-
mts, & insce agst fire of any houses, bldgs, or offices from time
to time belongg to the firm or used for the pposes of the sd
business, & all rates, taxes, assessmnts & other outgoings for or
in respt of the same, & the salaries, wages [maintee] & insce
of all clerks, travellers, apprentices, workmen, & psons
employed in the sd business, & the costs of insce agst
liability under the Workmen's Compenson Acts, 1906 to 1923,
or any extension or amendment thereof, for injury done to any
such psons, & generally all expses, losses, & damages wch shl be
incurred in carrying on the sd business or in anywise relatg
thereto, [& the intt on the capl payable to the respective
ptners] [except losses wch the [genl] ptners may think fit
to pay out of the reserve fund hrinar mentd,] shl be charged
against revenue in the profit & loss acct of the sd business ;
and any deficiency appearing from that acct upon the settlemt
of any annual genl acct shl be refunded to capl by the ptners
in eql shares [in the shares in wch they shl for the time being
be entitled to the net profits of the sd business] & until
refunded shl remain debited in their respective capl accts with
the firm in the shares afsd (a) or, "shl be borne by the ptners

each partner is entitled to interest at 5 per cent. on any sum advanced by him beyond the amount of capital agreed to be subscribed by him.

Profits
and
losses.

(a) By the P. Act, 1890, s. 24 (1), unless otherwise agreed, profits and losses are to be shared equally ; and see s. 44 as to the mode of settling accounts on dissolution. It is sometimes desired to provide for the restoration to

in eq'l shares, or as the case may be, & sh'l be debited in their respective cap'l accts with the firm accordgly."

15. THE OUTGOINGS, expses & losses incurred by the firm [including the expses of or incidental to attendances upon clients, or, "patients" or orwise by any ptner on behalf of the firm & the pformance by any ptner of the duties of any office of profit or appointmt held by him while a member of the firm] sh'l in balancing the accts of the firm be charged against revenue. Losses sh'l be borne & pd by the ptners in [eq'l shares] the shares in wch they are entitled to the net profits.

The same applicable to professional partnerships.

16. [ALL PREMIUMS wch sh'l be reced with articed clerks &] all fees, emolumts & benefits wch sh'l be reced or derived by the ptners or either of them while members or a member of the firm for services rendered or orwise in respt of any office (x), or, "the offices of agent, steward or receiver or any other office" of profit or appointmt held by them or either of them [including the offices of profit or appointmt now held by the sd A. as afsd] sh'l be treated & accounted for in the books of the firm as profits of the ptnp.

Appropriation to firm of profits from appointments held by a partner.

17. OUT OF the net profits of the sd business, as appearg upon the settlemt of every annual acct, [wch sh'l remain after paymt to the ptners of intt on their cap'l,] a sum calculated at the rate of £—— for every £100 of the net profits so remaing sh'l be set apart & carried to a separate acct to be called "the Reserve Fund." The sums for the time being standg to the credit of the reserve fund sh'l from time to time be applied for the ppose of meetg extraordinary losses or expses, or for such other pposes & in such mner as the ptners sh'l direct, & subj't thto sh'l belong to the ptners in the proportions in which they are entitled to profits. PROVD ALWAYS that if &

Provision for setting aside reserve fund.

capital of any deficiency appearing from the profit and loss account at the annual settlement of accounts, as in the case of drawings in excess of profits. Such a provision is inapplicable to the case of a limited partnership; and where, as in the alternative form in the text, this is not provided for, there can of course be no profits for distribution in any subsequent year until, by the share of profits credited to capital in that or any previous year, a credit balance beyond the original share of capital is shown.

(x) Where one of two solicitors who were partners served as an officer in the Army from 1914 to 1918, his Army pay was treated as profits of the partnership under a similar clause: *Carlyon-Britton v. Lumb*, 38 T. L. R. 298.

whenever the sum standg to the credit of the reserve fund shl amt to £——, the same shl not be further augmented by the retention of any pt of the, subseqt net profits unless all the ptners shl so agree.

Division
of net
profits
(b).

18. THE PTNERS shl be entitled to the net profits of the sd business [after makg provon for the reserve fund] in eql shares, or, “in the shares followg, that is to say, the sd A. to two eql third pts throf, & each of them the sd B. & C. to one eql sixth pt thof,” or, “in the shares or proportions in wch the capl of the ptnp shl for the time being belong to them resply,” & the net profits shl [subjt to clause — hrof (c), or, “to the exigencies of the business & the capl requiremts of the ptnp”] be divided betn the ptners immediately after the settlmt of the annl genl acct in each yr.

Minimum
sum gua-
ranteed
to one
partner.

19. IF THE share of the sd C. in the sd net profits [after makg provon for the reserve fund] shl in any yr or yrs, or, “in any one of the first three yrs of the ptnp” be less than £——, such share shl in any or every such yr be made up to £—— by the other ptners or ptner, the amt required for that ppose to be contributed by such other ptners if more than one in the proportions in wch they shl be entitled to share in the net profits, [and if the share of the sd C. in such net profits shl in each of the first three yrs of the ptnp be less than £——, the sd C. may retire from the firm at any time bfe the —— day of —— on giving notice, &c., as in form 6, p. 343].

Option
to one
partnerto
purchase
a further

20. THE SD C. shl have the option, to be signified to the other ptners or ptner on or bfe the —— day of ——, of pchasg a further share not exceedg one —— share of the future profits [goodwill & assets] of the sd business as from such day, at a

(b) As to the meaning of “profits” see *Re Spanish Prospecting Co.*, [1911] 1 Ch. 92; *Re Crabtree*, 106 L. T. 49; *Vulcan Motor and Engineering Co. v. Hampson*, [1921] 3 K. B. 597; Lindly, 8th ed., 40, 41, 458. Depreciation of leaseholds and machinery should be charged to profit and loss account: *Rishton v. Grissell*, L. R. 5 Eq. 326. In the absence of special agreement, the profits in each year must be ascertained on the footing of money actually paid and received without reference to when the work is done: *Badham v. Williams*, 86 L. T. 191; Lindley, 8th ed., 459. In the case of limited partnerships it is especially important that dividends should be paid strictly out of funds representing profits and not out of capital: see Limited Partnership Act, 1907, ss. 4 (3), 9 (1).

(c) See form 22, *infra*, p. 353; and cf. the provision as to the division and payment of profits in *Garwood v. Garwood*, 114 L. T. 341.

sum eql to — yrs' pchase of the average net profits of such share, calculated, if the ptnp shl have so long continued, during the — yrs immediately preceding the then last day for taking the annl genl acct, & if not, then from the commencemt of the sd ptnp up to that day, & the sum so pd shl be divided betn the sd A. & B. in the shares followg, &c., & after such pchase the share of the sd C. in the net profits shl be increased by the addon of the further share pchased by him, & the shares of the sd A. & B. in the net profits shl be correspondingly reduced, but so that the shares of the sd A. & B. shl continue to bear the same proportion to each other as their origl shares.

share of
the busi-
ness (a).

21. THE [GENL (b)] PTNERS shl be at liberty by monthly drawgs or orwise to draw out of the sd business in anticipon of their respective shares of profits, & to be accounted for at the next yrly [half-yrly] division of profits, the followg sums namely, the sd A. sums not exceedg £—, the sd B. sums not exceedg £—, & the sd C. sums not exceedg £— durg any qtr of a yr, but if in any yr [half-yr] the amt so drawn out by any ptner shl, on takg the genl acct, be found to be in excess of his share of the net profits [after providg for the reserve fund], then immedly after such acct shl have been taken & settled the excess so drawn out shl be refunded witht intt.

Draw-
ings.

22. IF THE share of any [genl] ptner in the net profits for any yr as ascertained upon takg the annl genl acct [after providg for the reserve fund] shl exceed the total amt wch he is hby authorised to draw out in anticipon of profits durg that yr, the surplus of such share over & above the amt so authorised to be drawn out shl be retained & added to his share in the capl of the firm until the total capl shl amt to the sum of £—, & each ptner shl be entitled to receive intt at the rate of £— p.c. p.a. on the sums so retained & carried to his credit as capl.

Surplus
profits
above au-
thorised
drawings
to be
capital-
ised (c).

(a) This clause is appropriate only to professional and other partnerships carried on without any fixed capital.

(b) See *post*, p. 396, note (c).

(c) See the Limited Partnership Act, 1907, s. 9.

BUSINESS REGULATIONS.

(i.) MANAGEMENT.

One partner to be manager at a salary (d).

1. THE SD B. shl be the manager of the sd business & shl be entitled to be pd for his services as such manager the annual sum of £—— bfe any division of profits & in addition to his share of profits, by eql qtrly paymts, the first paymt to be made on the —— day of ——.

Senior partner to have control.

2. THE SD A. shl have the sole genl direction & control of the sd business & all matters connected therewith, includg the engagemt & dismissal of all clerks & others employed thrin & the decision as to the terms of their employmt, as he may from time to time deem expedient for the intts & requiremts of the sd business. In the event of the death or retiremt of the sd A., the controllg power & rights conferred on him by this clause shl be vested in all the [genl] ptners for the time being, & in case of division of opinion betn them the matter shl be decided by a majority of votes, each ptner havg a votg power proportionate to his right to share in profits.

Sleeping or limited partner (e).

3. THE SD K. shl not be required to [& shl not while remaing a limited ptner] interfere with the carryg on, managemt, or conduct of the sd business, & shl not sign the name of the firm.

Residence.

4. THE SD A. shl reside at the sd dwelling-house at ——, where the sd business is to be carried on, free of rent, rates, taxes, assessmts, & expses of insee, wch shl be pd out of the assets of the firm, provd that he shl, on givg three calr months' notice in writg to the other ptners, be at liberty to lodge out of the sd house, & in such case shl be allowed the annual sum of £—— out of the assets of the firm in lieu of such lodging.

Attention to business (f).

5. EACH PTNER [other than the sd K.] shl at all times durg the ptnp devote the whole of his time & attention to the sd ptnp business, & diligently & faithfully employ himself

(d) See note (f), *infra*. As to the authority of a managing partner, see *Tomlinson v. Broadsmith*, [1896], 1 Q. B. 386.

(e) See the Limited Partnership Act, 1907, s. 6.

(f) By the P. Act, 1890, s. 24, unless otherwise agreed, every partner may take part in the management (sub-s. 5); but no partner is entitled to any remuneration for acting (sub-s. 6). By the Limited Partnership Act, 1907, s. 6, a limited partner may take no part in the management, and, if he does so, becomes liable for the time being as a general partner.

thrin, & carry on the same for the greatest advantage of the ptnp; *if desired, insert provons as to holidays.*

6. *C. to give whole time, &c., as in last clause.* The sd B. shl give such an amt of supervision & attention to the sd business as may be necy for the efficient managment throf, & except to that extent shl not be bound to psonal attendance or participon thrin. The sd A. shl not be obliged to attend to the sd business any further than he shl think pper.

The same where some partners not to be bound to attend to business.

(ii.) DUTIES OF PARTNERS.

7. EACH PTNER shl be just & faithful to the other ptners or ptnr in all transactions relatg to the business of the ptnp, & shl give a true acct of the same to them when & so often as the same shl be reasbly required.

To be just, &c.

8. EACH PTNER shl, upon every reasble reqt, inform the other ptners or ptnr of all letters, accts, writgs, & other things weh shl come to his hands or knowledge concerng the business of the ptnp.

To give information (a).

9. EACH PTNER shl punctually pay & discharge his psnt & future separate debts & engagemts, & shl at all times keep indemnified the other ptners or ptnr, & their or his repves, & the ppty of the ptnp, against the same & all actions, proceedings, costs, claims, & demands, in respt throf.

Each partnerto pay his private debts.

10. No PTNER shl witht the consent in writing] of the other [genl] ptners or ptnr :—

Negative provisions.

(i.) Carry on or be concerned or interested (c) directly or indirectly in the business of — except on acct & for the benefit of the ptnp nor engage in or undertake any other trade, business or manufacture [or become a director of any joint stock company].

Not to carry on business (b).

(a) Section 28 of the P. Act, 1890, is to the like effect.

(b) See Lindley, 8th ed., 366, and Vol. I., pp. 36 *et seq.* A partner is liable to account for profits made in a competing business carried on without the consent of his co-partners: P. Act, 1890, s. 30; or from any use by him of the partnership name or connection; *ib.*, s. 29; but he need not account even if using the firm's information and connection where the other business is a different one from that carried on by the firm: *Aas v. Benham*, [1891] 2 Ch. 249. An agreement by a partner to give his whole time to the business should be accompanied by a negative stipulation against engaging in any other business, as in the above clause, in order to give the remedy by injunction: *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416; and cases cited, Vol. I., p. 23, note (b).

(c) As to this prohibition, see Vol. I., p. 39, note (b).

Not to compound debts.

Not to become surety, &c., nor allow property to be taken in execution (d).

Not to assign or mortgage share (e).

Not to introduce partner (f).

Not to pledge credit of firm (g).

(ii.) Compound, release or discharge any debt wch shl be due or owing to the ptnp wtht receiving the full amt throf.

(iii.) Become bail, surety or secy for any pson or corporon [or subscribe any policy of insce] nor do nor knowingly suffer anything whby the ppty of the ptnp may be seized, attached or taken in execution.

(iv.) Assn or mtge his share or intt in the ptnp [except to a son or nephew upon his introduction into the ptnp as hrinar provd] [Prov'd that any ptner who shl have offered his share in the ptnp to the other ptners or ptner shl, on their or his refusal or failure to accept such offer within one calr month after the same shl have been made in writing to them or him, be at liberty to sell such share upon the same terms as those upon wch the same shl have been so previously offered.]

(v.) Introduce any pson or psons as a ptner in the firm except a son or nephew.

(vi.) Draw, accept, or sign any bill of exchange or promissory note, or contract any debt on acct of the ptnp, or employ any of the moys or effects throf, or in any mner pledge the credit throf, except in the usual & regular course of business.

(d) See P. Act, 1890, s. 23.

(e) By s. 31 of the P. Act, 1890, the assignee of the share of a partner acquires no rights beyond the right to receive the share of profits of the assigning partner during the continuance of the partnership and his share of assets on dissolution and the right, for the purpose of ascertaining such share, to an account as from the date of the dissolution: see *Watts v. Driscoll*, [1901] 1 Ch. 294; *Bonnin v. Neame*, [1910] 1 Ch. 732. He has no right to an account during the continuance of the partnership and cannot interfere in the management of the business: *Re Garwood*, [1903] 1 Ch. 236. By s. 6 (5) of the Limited Partnership Act, 1907, upon the assignment with the consent of the general partners by a limited partner of his share, the assignee becomes a limited partner with all the rights of the assignor, subject to notice of the assignment being duly advertised in the *Gazette* under s. 10.

(f) Subject to agreement, no person can be introduced as a partner without the consent of all the partners other than the existing limited partners: P. Act, 1890, s. 24 (7); Limited Partnership Act, 1907, s. 6 (5).

(g) As to the power of a partner to pledge the credit of the firm or his co-partners, see P. Act, 1890, ss. 5 *et seq.* As a general rule a partner in a trading business, *i.e.* a business of which the buying and selling of goods are essential features, has power, but a partner in a non-trading business has not power to pledge the credit of the firm. See *Wheatley v. Smithers*, [1907] 2 K. B. 684; *Higgins v. Beauchamp*, [1914] 3 K. B. 1192, and *cf.* *Keen v. Mear*, [1920] 2 Ch. 574. As to limited partners, see the Limited Partnership Act, 1907, s. 6 (1).

[(vii.) Sign, draw, endorse, or negotiate any bill, promissory note, bond, or other secy in the name or on behalf of the firm, other than the *bonâ fide* bills, notes or secs of the firm, wch shl have been regularly recorded in the books throf.]

The same.
Another form (a).

(viii.) Lend moy or give credit to or have any deals on behalf of the ptnp with any pson or company whom the other [genl] ptners or ptnr shl previously have forbidden him to trust or deal with.

Not to give credit when forbidden.

(ix.) Buy, order, or contract for any real or leasehd ppty or for any goods or articles for the use of the firm exceedg the value of £—— [& if any ptnr shl do so the other [genl] ptners or ptnr shl have the option either to take the ppty so bought, ordered, or contracted for, on behalf of the ptnp, or to let the same remain & be for the separate use of the ptnr so buying, orderg, or contractg, in wch case he shl pay for the same out of his own moys.]

No contract to exceed a certain amount.

(x.) Hire or, except in case of gross misconduct, dismiss any clerk [travellr] or pson in the employmt of the firm, or take any apprentice [or, articled clerk, or change the London agents of the firm].

Hiring clerks, &c. (b).

(xi.) Undertake any journey or voyage on acct of the firm necessitating an absence of more than —— days from the head office of the firm.

Journeys

(iii.) BANKING.

11. THE BANKERS of the firm shl be [Messrs.] ——, or such other bankers as the [majority of the] ptners shl from time to time determine, & all moys & secs belongg to the firm, except such moys as are required for current expses, shl be pd into & deposited with the sd bank.

Bankers.

12. ALL MOYS wch shl from time to time be reced by the ptners or any of them for or on acct of the firm shl be immedly pd into the bank in the same drafts, cheques, bills, or cash in wch the same are reced, & all disbursemts for or on acct of the firm shl be made either by draft on such bankers or through the medium of the cash clerk of the firm.

Provision as to moneys received and paid on account of partnership.

(a) See note (g), p. 356.

(b) See *Covell v. Scamell*, 103 L. T. 535.

Money
and
securities
belonging
to clients.

13. ALL MOYS & SECS for moy reeed by the ptners or any of them on behalf of or as the ppty of a client or third pson, except such of the same as shl be required for the matter in hand on behalf of such client or third person, shl forthwith be pd or delivered to such client or third pson or pd into or deposited with the bank to an acct separate & distinct from any acct relating to the ppty of the firm.

Cheques.

14. ALL CHEQUES, bills, & other writgs, pledging the credit or affectg the ppty of the firm, shl be signed by the sd A. or B., & not orwise.

ACCOUNTS.

Accounts
to be
kept (c).

1. PPER BOOKS of acct shl be kept by the [genl] ptners, & entries made thrin of all such matters, transactions & things as are usually entered in books of acct kept by psons engaged in concerns of a similar nature, [& the same shl be posted up under the psonal superintendce of —]. The sd books of acct, & all letters, papers, & documts belongg to the firm [except such as are to be kept at the bankers] shl be kept at the countg-house, or, “office,” of the firm, & each ptner shl at all times have free access by himself or his agent to examine & copy the same.

Annual
general
account
(d).

2. ON THE — day of —, & on every subseqt — day of —, a genl acct shl be taken of the assets & liabilities of the ptnp & of all dealgs & transactions of the ptnp durg the then preceedg yr [or, in the case of the first of such accts, since the commencemt of the ptnp,] & of all matters & things usually comprehended in accts of a like nature taken by psons engaged in a like business, & in takg such acct a just valuation shl be made of all items requirg valuon. Such genl acct [shl be prepared & audited by a competent [chartered] accountant to be from time to time agrd

Books of
account.

(c) By the P. Act, 1890, s. 24 (9), the books are to be kept at the place of principal place of business, each partner having a right of inspection, &c., subject to any agreement. A partner can authorise an agent to examine the books on his behalf: *Bevan v. Webb*, [1901] 2 Ch. 59; see *Norey v. Keep*, [1901] 1 Ch. 561. The right of inspection personally or by an agent is extended to limited partners by s. 6 (1) of the Limited Partnership Act, 1907.

(d) It is not the practice to take into account the value of the goodwill in taking the annual general account, *Stewart v. Gladstone* 10 Ch. D. 626.

upon by the ptners, &] shl be entered in a book, wch shl be signed by all the ptners, & when so signed shl be binding on them, save that if any manifest error shl be found thrin & signified by any ptner to the other ptners within — calr months after such signature the same shl be rectified.

DISSOLUTION CLAUSES.

1. UPON DISSOLUTION of the ptnp [in any event not orwise hrin provd for] a full & genl acct of the assets, liabilities, & transactions of the ptnp shl be taken & the assets & ppty throf shl with all convenient speed be realised & sold (b), & the

Ordinary provision for winding-up on dissolution (a).

(a) This or the following clause is usually inserted in partnership articles although, if brevity is desired, reliance may be placed upon the provisions of the P. Act, 1890, ss. 39, 44, which, subject to any agreement, regulate the rights of the parties upon a dissolution. Under the former section, as under the clause in the text, each partner may claim to have the whole of the partnership property realised for purposes of division, including the goodwill of the business, although not expressly mentioned: *Hill v. Fearis*, [1905] 1 Ch. 466. Compare the old rule stated in *Darby v. Darby*, 3 Drew. at p. 503; and as to the principle of distribution compare the form of order in *Binney v. Mutrie*, 12 App. Cas. 160.

In the absence of agreement to the contrary any partner will be entitled, notwithstanding a sale, to set up a competing business in the same place, although he will not be entitled to use the old name, which is part of the goodwill, nor solicit the customers of the business: *Trego v. Hunt*, [1896] A. C. 7; *Gillingham v. Beddow*, [1900] 2 Ch. 242; *Curl v. Webster*, [1904] 1 Ch. 685. With a view to increasing the value of the goodwill as a saleable asset upon dissolution, the following clause may be inserted if required, "Upon any such realison & sale of the ptnp assets & ppty as afsd, the business of the ptnp shl be sold upon the footing that no ptner (unless he shl be the pchaser throf) shl during the period of — yrs from the sale throf, carry on or engage, or be interested directly or indirectly in the business of — within — miles of the town hall of —." A covenant by a partner contained in the articles, not to carry on a similar business, will pass by a subsequent assignment of the goodwill as incident thereto: *Townsend v. Jarman*, [1900] 2 Ch. 698. For special provisions on the death, bankruptcy, retirement or expulsion of a partner see *post*, pp. 424 to 432, forms 6 to 18.

(b) A surviving partner has power to sell or mortgage real estate for the purpose of winding up the affairs of the partnership: *Re Langmead*, 7 De G. M. & G. 353; *Re Bourne*, [1906] 2 Ch. 427; and see *Butchart v. Dresser*, 4 De G. M. & G. 542. This power is in addition to the power of sale conferred by ss. 34 (2) and 36 (1) of the Limited Partnership Act, 1925, and the power of management conferred on trustees for sale by s. 28 of the same Act. As to the right of each partner to a sale on dissolution in the absence of agreement, see Lindley, 8th ed., 623.

debts due to the ptnp got in, & the proceeds shl be applied in the first place in discharge of the liabilities of the ptnp & the expses of liquidatg the same & realisg the assets throf, & in the next place, in paymt to each ptner or his repves, of any unpd intt or profits comg to him [including his share of the sum for the time being standing to the credit of the reserve fund], & of the amt due to him in respt of capl, & the surplus (if any) of the moys realised as afsd shl be divided betn the ptners or their repves in eql shares [in the shares in wch the ptners shl be entitled to the net profits of the sd business], & the ptners, or their repves shl execute such instrumts for facilitatg & effectg the realison & division of the assets of the ptnp, & for their mutual indemnity & release & orwise as may be requisite or pper (c).

The same, short form referring to the Partnership Acts (d).

The same where assets are to vest in senior partner.

2. UPON DISSOLUTION of the ptnp [in any event not orwise hrin provd for] the affairs throf shl be wound up, & the assets & liabilities dealt with in mner provd by the Ptnp Act, 1890, [& the Limited Partnership Act, 1907].

3. UPON DISSOLUTION of the ptnp [in any event not orwise hrin provd for] the sd business & the assets & goodwill throf shl vest absolutely in the sd A. if living & remaining a ptner, subjt to the discharge by him of the ptnp debts & liabilities & to the paymt by him to each of the other ptners in satisfson of

Provision for deficiency.

(c) If desired add, " Prov'd that if the moys realised as afsd shl not be sufft to pay in full the respective shares of the ptners or their repves in the sd capl, the same shl be pd rateably as far as such moys will extend, & no ptner or his repves shl have any claim against the others or other of them, or their or his repves, in respt of such deficiency. Prov'd further that the goodwill of the business shl not be sold but shl be divided betn the ptners."

(d) See P. Act, 1890, ss. 39, 44; *Garner v. Murray*, [1904] 1 Ch. 57. See also the Limited Partnership Act, 1907, s. 6 (3) and (4). The latter sub-section was repealed by s. 286 of the Companies C. Act, 1908. Such of the provisions of the last mentioned Act, as relate to the winding up of limited partnerships, were repealed by the Bankruptcy, &c., Act, 1913, s. 24 (2); and now by s. 127 of the Bankruptcy Act, 1914 (re-enacting s. 24 (1) of the earlier Act), it is provided that, subject to such modifications as may be made by general rules under that Act, the provisions of that Act shall apply to limited partnerships in like manner as if limited parternships were ordinary partnerships; and that, on all the general partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the trustee.

his share in the ptnp business of the amt to wch such ptner wd have become entitled as an outgoing ptner under clause — hrof in mner hrinar mentd, but if the sd A. shl have died or retired from the sd firm then a full, &c., *continue as at* p. 420, f. 1. (a)

4. UPON DISSOLUTION of the ptnp [in any event not orwise hrin provd for] an acct shl be taken of the assets & liabilities throf, & a valuon shl be made of all such items in such acct as require & admit of valuon, & upon the complon of such acct & valuon the ptners, or their repves, shl forthwith make due provon for the satisfon of the liabilities of the ptnp, & of the costs of liquidatg the same [& subjt thereto the assets [includg the goodwill (b)] of the ptnp shl be divided into shares of eql value, & one of such shares shl be allotted to & become the sole ppty of each ptner or his repves:] [or, “& subjt thto such pt of the assets of the ptnp as shl be eql in value to the capl then belongg to each ptner shl be allotted to him or his repves as his or their sole ppty, & the residue (if any) of the sd assets shl be divided betn & allotted to the ptners or their repves in the shares in wch the ptners shl be entitled to the net profits”]: Prov d that if it shl be so decided by a majority of the ptners (& for this ppose the repves of a deced ptner shl be substituted for him) any pt of the assets may be carried to a suspense acct to meet any contingent or unascertained liabilities of the ptnp; Prov d also that all such instrumts or assurances as may be requisite or pper shl be executed by the ptners or their repves for facilitatg the gettg in of the outstandg assets, & for vestg the sole right of ppty thrin in any pson or psons to whom the same shl be allotted, & for enablg him or them to recover the same, & for securg the discharge of the outstandg liabilities by the pson or psons who shl undertake such discharge, & indemnifyg the ptners or their repves touchg the premes, & for releasg each other from all claims on acct of the ptnp.

Winding up on dissolution where the assets may be of a complex character, providing for division in specie.

(a) See *ante*, p. 359, note (a). Special provisions to take effect upon a dissolution on the death, bankruptcy or retirement of any partner are intended to follow this clause.

(b) The goodwill is divisible in this case without express mention. Each partner will be entitled to use the firm name subject to the qualification that he must not by so doing expose the other partners to liability: *Burchell v. Wilde*, [1900] 1 Ch. 551; see *ante*, p. 353, note (a).

Dissolu-
tion, the
partners
to have
option in
succe-
sion to
succeed
to the
whole
business
(c).

5. UPON DISSOLUTION of the ptnp by effluxion of time, the sd A. shl have the option, to be signified in writg to the other ptners or ptner not more than — nor less than — calr months bfe the expiron throf, to succeed to the whole of the sd business : And if the sd A. shl so signify his election not to succeed thto, or shl fail within the time afsd so to signify his election to succeed thereto, then the sd B. shl have the like option, to be signified in like mner not less than — calr months bfe the expiron of the ptnp : And in the event of his electg within such time not to succeed to the sd business, or failg to signify his election in mner.afsd, then the sd C. shl have the like option to be signified in like mner bfe the expiron of the ptnp : And in case any ptner shl elect to succeed to the sd business as afsd, a genl acct & valuon shl be taken & made at the expiron of the ptnp, at the expse of the ptnp, of the assets & liabilities throf [includg the estimated value of the goodwill, or “except the goodwill in respt of wch nothing shl be charged ” (d)]: And the ptner so succeedg to the sd business shl pay to the others or other of them resply the sum wch, on takg such acct, shl appear to be the value of their or his shares or share resply of the capl [goodwill], intt, & profits, after makg provon for all the liabilities of the ptnp, wch sum shl as one aggregate amt, bearg intt at the rate of £—— p.c. p.a. from the expiron of the ptnp, be pd by such ptner as soon as conveniently may be, & at the latest within six calr months from the expiron of the ptnp, to the outgoing ptners or ptner ; And the whole of the assets [& goodwill] of the ptnp shl, as from such expiron, become the sole ppty of the ptner so succeedg to the sd business, who shl indemnify the other ptners or ptner

(c) See the P. Act, 1890, s. 42 (2) ; *Daw v. Herring*, [1892] 1 Ch. 284.

Goodwill.

(d) Goodwill, if not expressly mentioned, will have to be included in the valuation on the footing that the succeeding partner, were he not the purchaser, could set up a similar business : *Hall v. Barrows*, 4 De G. J. & S. 150 ; *Page v. Ratcliffe*, 76 L. T. 63 ; but would not have the right to solicit any customer of the firm : *Re David & Matthews*, [1899] 1 Ch. 378. As to the rights of the partner entitled to the goodwill, see *Trego v. Hunt*, [1896] A. C. 7 ; *Jennings v. Jennings*, [1898] 1 Ch. 378, and see *ante*, p. 420, note (a).

A direction excluding the goodwill from valuation is effectual : *Hordern v. Hordern*, [1910] A. C. 465 ; and does not necessarily import want of consideration as regards the goodwill so as to give rise to a claim for estate duty in respect thereof : *Att.-Gen. v. Boden*, [1912] 1 K. B. 539.

against all the outstandg liabilities of the ptnp on that day, & such assuress & instrumts (if any) as shl be necy for vestg in the ptner so succeedg all the assets of the ptnp, & for indemnifyg the outgoing ptners or ptner against the liabilities of the ptnp, & for releasg each other touchg the premes & from all claims on acct of the ptnp, shl be executed by the ptners at their joint expse.

6. IF DURING the continue of the ptnp any [genl (a)] ptner shl die, become bkpt, or retire (b) the share of the deced or outgoing ptner shl, as from his so dying or ceasing to be a ptner, belong to the remaing [genl] ptners or ptner, & if more than one in shares proportionate to their then shares in the profits of the business, & the ptnp shl be continued betn the remaing ptners, if more than one, under the provons of these psnts so far as applicable, & the este of the deced ptner or the outgoing ptner or his este (as the case may be) shl be entitled to a sum eql to the amt of his share in the capl of the ptnp as shown in his capl acct with the firm (d) [with intt to the date of his death or ceasing to be a ptner], [including his share of the sum for the time being standing to the credit of the reserve

Provision for purchase by continuing partners of the share of partner dying, &c. (c).

(a) See Limited Partnership Act, 1907, s. 6 (2).

(b) If there is a power to dismiss a probationary partner add here "or being a probationary ptner shl be dismissed under the power hrin contd."

(c) Whether there be two or more partners, it is usually desirable to provide that in the event of a dissolution of the partnership being occasioned before the expiration of the term by the inability, unwillingness or refusal of a partner to continue the business in accordance with the provisions of the partnership articles, power should be given to the other partners or partner to do so with as little interruption to the business of the firm as may be possible under the circumstances. The clause in the text is of general application, and safeguards the continuing partners or partner under all circumstances from the possibility of an outgoing partner or his representatives insisting upon a sale of the partnership effects; and it obviates the inconvenience, if not indeed the stoppage of the business, which the general taking of an account would entail, and invests the remaining partners or partner with the right to continue the business for their own benefit, together with any benefit to be derived from goodwill and the use of the firm name. The clause might be confined to death and bankruptcy and clause 17 inserted as to retirement; and may be used separately or in conjunction with either of the general dissolution clauses (forms 1 and 2), reliance in the former case being placed upon the provisions of the P. Act, 1890, ss. 39 and 44, so far as applicable. See the provisions where a partner is expelled, *post*, p. 371, f. 18.

Desirability of providing against interruption of business on dissolution.

Where, as in the case of new partners being taken into an old firm, it is

fund], & also if he die or cease to be a ptner on the day for takg the annual genl acct, to his share of profits as ascertained on takg such acct, & if he die or cease to be a ptner on any other day, to an allowce in lieu of profits at the rate of £—— p.c. p.a. (e) on the amt of his share in the sd capl up to the day of his death or ceasing to be a ptner, to be calculated, if he shl die or cease to be a ptner bfe the —— day of ——, *the first day for takg the annual acct*, from the commencemt of the ptnp, but if he shl die or cease to be a ptner after that day, then from the last past day for takg the annual genl acct (but subjt to the deduction of any drawgs on acct of current profits wch shl have been made by him) ; & the outgoing ptner or his repves shl be bound by such last annual genl acct, & shl be excluded from examing the ptnp books ; & the amt to wch the este of the deced ptner or the outgoing ptner or his este shl be entitled as afsd (f) shl, as one aggregate sum carryg intt at the rate of

intended that more favourable terms are to be extended to the senior partners on their death or retirement, the clause in the text should be confined in its application to the incoming partners, and clause 9, altered so as to apply only to the senior partners, inserted in addition.

Extension of clause to bankruptcy.

It was at one time considered that the extension of this clause to the bankruptcy of an outgoing partner would constitute a fraud upon the bankruptcy law ; but similar provisions contained in the articles of association of a private company have been held to be valid as against the trustee in bankruptcy of a bankrupt shareholder : *Borland v. Steel*, [1901] 1 Ch. 279 ; and there appears to be no difference in principle between the two cases. It may, however, be regarded as doubtful how far the usual provisions as to the manner and time of payment of the amount to which the outgoing partner becomes entitled under the above clause in respect of his share in the capital of the business would be held binding upon the trustee of a bankrupt partner : see *Wilson v. Greenwood*, 1 Swanst. 471 ; *Collins v. Barker*, [1893] 1 Ch. 578 ; and cf. Lindley, 8th ed., 498, 761.

(d) This will include all profits declared and carried to the capital account remaining undrawn. The outgoing partner's share of capital may, if preferred, be described as at p. 382, f. 18. In the absence of evidence of any uniform usage to the contrary the assets should be taken at their fair value to the firm at the date of the account and not at their book value as appearing in the books of the partnership : *Cruickshank v. Sutherland*, 92 L. J. (Ch.) 136.

(e) This is a usual provision, but if the capital is small compared with the profits, a proportionately high rate of interest should be fixed ; or the interest might be " at a rate eql to the average net profits durg the three yrs precedg the last day for takg the annual genl acct."

(f) If the amount to which the outgoing partner is entitled in respect of capital is to be paid out by instalments (see f. 10), or is to remain in the business as a loan (see f. 11), continue : " shl as to so much

£—— p.c. p.a. from the date of his death or ceasing to be a ptner, be pd by the remaining [genl] ptners or ptner as soon as conveniently may be, & at the latest within six calr months from the day of his death or ceasing to be a ptner (a); & the whole of the assets includg the goodwill (b) of the ptnp as from the day of such death or ceasing to be a ptner as afsd, shl belong to & the whole of the liabilities throf as from that day shl be borne by the remaining ptners or ptner solely [but not so as to increase the liability of the limited ptner]; & all such instrumts, assurances, transfers, indemnities, & releases shl be executed & made & such notices in the Gazette shl be published by the respective pties for givg effect to this psnt provon as may be necy & pper. The costs of carrying this provon into effect shl be borne by the remaining ptners or ptner & the outgoing ptner or the repves of a deced ptner in shares proportionate to their shares in the capl. Costs.

7. (i.) IF DURING the continue of the ptnp any genl ptner shl die, become bkpt or retire, the remaining ptners or ptner shl have the option of purchasing his share upon the terms hrinar mentd as from the date of his ceasing to be a ptner, on giving written notice to him or his repves within three calr months from his death or ceasing to be a ptner. Option of purchase by continuing partners of the share of partner dying, &c. (c).

throf as shl represent [intt on capl &] profits be pd by the remaining [general] ptners, &c. . . , but as to so much throf as shl represent capl shl be dealt with in mner hrinar appearg."

If it is intended to differentiate between the partners continue: "shl in theevent of either the sd B. or C. dying or ceasing to be a ptner be pd as one aggregate sum, &c. . . & in the event of the sd A. dying or ceasing to be a ptner shl as to so much throf only as shl represent [intt on capl &] profits be pd as one aggregate sum in like mner carrying intt at the like rate, but as to so much throf as shl represent capl in mner hrinar appearg."

(a) See P. Act, 1890, s. 43.

(b) The outgoing partner is not entitled under this clause to have the value of the goodwill taken into account in estimating his share of profits: *Steuart v. Gladstone*, 10 Ch. D. 626; *Hunter v. Dowling*, [1895] 2 Ch. 223; *Scott v. Scott*, 89 L. T., 582. As regards setting up a competing business, soliciting old customers and using the firm name, the outgoing partner is in the position of a vendor of the business, and the continuing partners are in the position of purchasers: see *Jennings v. Jennings*, [1898] 1 Ch. 378, and *ante*, p. 359, note (a). See the continuing partner's protection clause, *post*, p. 372, f. 22.

(c) Cf. *post*, p. 382, f. 18, and p. 392, f. 32.

(ii.) THE pchase-moy shl be the amt of the share of the deced or outgoing ptner in the capl, &c., *continue as in f. 6, p. 363, saying, “&, &c., in the profits as ascertained, &c.,” and referring later to “the amt of such pchase-moy.”*

Proviso
for event
of annual
account
preceding
death,
&c.,
of a part-
ner not
having
been
taken (d).

8. AN OUTGOING [retirg] ptner or the repves of a deced ptner [may join with the remaining ptners or ptner in takg any genl annual acct & valuon wch ought to have, but shl not have, been taken & signed from the foot of the last annual genl acct & valuon wch shl have been taken & signed, & also, if such ptner shl die or cease to be a ptner [retire] on the — day of —, in takg the acct & valuon wch ought to be taken on that day ; & if he or they shl refuse or neglect to join in takg such acct & valuon he or they] shl accept as bindg & conclusive the certfe of the remaining ptners or ptner as to the amt coming to them or him as afsd. *If the clause in the bracket is omitted, add “& shl not be entitled in any mner to interfere in or to inspect or enquire into the books or affairs of the sd firm.”*

Provision
for death
or volun-
tary re-
tirement.
Short
form,
where
deceased
or retir-
ing part-
ner is to
have pro-
fits up to
his death,
or retire-
ment (f).

9. If any [genl] ptner shl die or voluntarily retire an acct & statemt shl be taken & made out of his share of the capl & effects of the ptnp, & of all unpd intt & profits belongg to him up to the time of his death or retiremt, for wch ppose a valuon shl be made of any assets or effects requirg valuon [& of the goodwill, or, “other than the goodwill in respt of wch nothing shl be charged” (e)], & the amt so ascertained to be due & owing to the deced or retirg ptner shl be pd by the remaining [genl] ptners or ptner to him or his repves as the case may be within — calr months from his death or retiremt, with intt thron from such death or retiremt until paymt, at the rate of £ — p.c. p.a., & on such paymt the share of the deced or retirg ptner in the ptnp ppty & effects shl go & belong to the remaining [genl] ptners or ptner in the proportions

(d) See *Hunter v. Dowling*, [1893] 3 Ch. 212 ; [1895] 2 Ch. 223.

(e) See *ante*, p. 362, note (d).

(f) This clause constitutes a binding contract for purchase by the continuing partners of the deceased or retiring partner's share : *Hordern v. Hordern*, [1910] A. C. 465 ; and will be found useful in the case of professional partnerships, and may also be adopted with advantage in other cases in conjunction with f. 6 : see *ante*, p. 363, note (c). The variations where it is intended that the amount found due in respect of capital shall be paid by instalments or allowed to remain in the business as a loan, will be the same *mutatis mutandis* as indicated at p. 364, note (f).

(if more than one) in wch they shl have contributed to the pchase throf. [Add provision as to costs, p. 365, f. 6, *mutatis mutandis*.]

10. THE AMT to which the este of a deced ptner or an outgoing ptner or his este, or, "the sd A. or his este," shl become entitled under clause — hrof in respt of capl shl remain as a loan (a) to the remaining [genl] ptners or ptner, repayable with intt at the rate of £—— p.c. p.a. by the instalmts & at the times hrinar mentd, that is to say, the ppal sum by four eql instalmts, to be pd resply at the expiron of six, twelve, eighteen, & twenty-four calr months from the date of such deced or outgoing ptner dying or ceasing to be a ptner; & the intt on the sd ppal sum, or on so much throf as shl for the time being remain unpd, shl be added to & pd with each such instalmt of ppal, & the paymt of such instalmts & intt shl be seed to the este of the deced ptner or to the outgoing ptner or his este, or, "to the sd A. or his este," at the expse & by the joint & sevl deed of covt of the remaining [genl] ptners or ptner.

Amount due to outgoing partner in respect of capital to be paid by instalments.

11. THE AMT to wch the este of a deced ptner or an outgoing ptner or his este, or, "the sd A. or his este," shl become entitled under clause — hrof in respt of capl shl remain as a loan (a) to the remaining [genl] ptners or ptner durg the residue of the sd term of — yrs [or durg such shorter period as such remaining [general] ptners or ptner shl carry on the sd business either alone or in ptnp with any other psons or pson in accordance with the provons of these psnts] bearg intt at the rate of £—— p.c. p.a., payable on the usual qtr days (b); And the repaymt of the sd loan at the end of the sd period, togr with intt thron as afsd, shl be seed to the este of the deced

Amount due to outgoing partner in respect of capital to remain as a loan during the partnership term.

(a) If the firm becomes bankrupt, or goes into liquidation, before all the debts due at the death of the deceased partner are paid, his representatives cannot prove for the money due to them in competition with other creditors: *Nanson v. Gordon*, 1 App. Cas. 195; *Ex p. Blythe*, 16 Ch. D. 620.

Bankruptcy.

(b) If desired add, "& additional intt for each yr, durg wch the ptnp shl make any profits, eql to one — pt of such profits, as appearg by the annl genl acct: such additional intt to be pd on the signature of the annl genl acct, & an apportioned pt throf to be pd for any fractional pt of a yr at the commencemt & terminon of the sd loan." See Precedent XIX., *post*, p. 422.

Variation.

ptner or to the outgoing ptner or his este, or, "to the sd A. or his este," at the expse & by the joint & sevl deed of covt of the remaining [genl] ptners or ptner.

Option to surviving partners to retain share of deceased partner in business, his representatives being sleeping partners.

12. IF ANY ptner shl die bfe the expiron of the ptnp, the survivg ptners or ptner shl have the option of retaining his share in the capl of the ptnp in the sd business durg the residue of the term of the ptnp, such option to be signified to the repves of the deced ptner within a reasble time after his will shl have been proved or admon of his este shl have been grted; & if the survivg ptners or ptner shl elect so to do the sd business (c) shl be carried on durg the residue of the sd term as from the death of the deced ptner, as nearly as may be accordg to the provons of these psnts, but so that the repves of the deced ptner shl succeed to his share in the business & be substituted for him as sleepg ptners only: Provd that if

Variation where personal representatives are to become limited partners.

(c) Executors carrying on the business of their testator in his firm-name are not partners within the meaning of the P. Act, 1890, s. 1: *Re Fisher & Sons*, [1912] 2 K. B. 491. If it is intended that the share of a deceased partner shall be continued in the business upon the footing that his personal representatives shall become partners in the business, it will now generally be preferable to take advantage of the provisions of the Limited Partnership Act, 1907, so as to enable the personal representatives to become partners with limited liability rather than sleeping partners. If so intended the following may be substituted from this point: "shl thrupon be carried on by & betn the survivg ptners or ptner as genl ptners or ptner & the repves of the deced ptner as limited ptners during the residue of the sd term, subjt to the provons of these psnts, with such variions as may be rendered necy by the ptnp so constituted being a limited ptnp, & so that the repves of the deced ptner shl succeed to his share in the business & be substituted for him as limited ptners. Provd that if the survivg ptners or ptner shl as genl ptners or ptner continue the sd business by virtue of such option as afsd in ptnp with the psonal repves of the deced ptner as limited ptners, all pper steps, advertisemts, instrumts and statemts for carrying the provons of this clause into effect shl, at the cost of the firm in every case, be taken, issued, executed, signed & made by them or him & the repves of the deced ptner, & thrupon the ptnp shl be registered as a limited ptnp in accordance with the provons in that behalf contd in the Limited Partnership Act, 1907." See *ante*, p. 343, note (b). This form may be adapted to the case of an existing limited partnership.

the survivg ptners or ptner shl continue the business by virtue of such option as afsd, all pper instrumts for carryg the provons of this clause into effect shl be executed & made betn them or him & the repves of the deced ptner : Provd also that if the net profits of the business wch shl be comg to the repves of such deced ptner shl in any yr be less than £—— p.c. on the amt of the capl of such deced ptner retained in the sd business, such repves may retire from the ptnp on givg not less than six calr months' notice to the other ptners or ptner of their intention so to do ; & at the expiron of such notice the ptnp shl determine as to them, & they shl be entitled to receive the share of capl of such deced ptner, with all intt & profits becomg due thron up to the expiron of such notice, on the same or the like footg as if the deced ptner had then died & such option of retaing his capl as afsd had not been exercised.

13. IF ANY ptner shl die bfe the expiron of the ptnp, his repves shl have the option, to be declared by notice in writg given to the survivg ptners or ptner within —— calr months after his death, of succeedg to his share in the sd business as from his death as sleepg ptners (a) ; & if such option shl be exercised the sd business shl be carried on durg the residue of the sd term as from the death of such deced ptner as nearly as may be accordg to the provons of these psnts, but so that the repves of the deced ptner shl succeed to his share in the sd business & be substituted for him as sleepg ptners only : Provd also that if the repves of a deced ptner shl elect to become sleepg ptners by virtue of such option as afsd, all pper instrumts for carryg the provons of this psnt clause into effect shl be executed & made betn them & the survivg ptners or ptner. *Add proviso at end of last form, mutatis mutandis, if desired.*

Power for representatives of deceased partner to continue as sleeping partners.

14. THE REPVES of a deced ptner who may be sleepg ptners, or entitled to any share of profits or paymt in proportion to profits as afsd, shl not have any power to interfere in or have any control over the conduct or managemt of the sd business, [& shl not be entitled to require the production of any accts, vouchers, or documts, or any informon as to the transactions

As to rights of sleeping partners (b).

(a) If intended say instead " as limited ptners " and continue as in the preceding note, *mutatis mutandis*.

(b) Compare the Limited Partnership Act, 1907, s. 6, as to limited partners.

or affairs throf, & the survivg ptners or ptnr shl half-yrly on or as soon as may be after the 1st day of — & the 1st day of —, give or send to the repves of the deced ptnr a statemt or balance-sheet showg the net profits of the business durg the precedg half-yr, & shl certify in writg to the best of their or his belief the correctness of such statemt or balance-sheet, wch shl thrupon become absolutely bindg on such repves] [or, “but such repves or some pson nominated by them shl be entitled at all reasble times to have access to & examine & copy the books, documts, & papers of the firm, & to join in takg the half-yrly genl acct & valuon ”].

Power to surviving or continuing partners to purchase lease of house of business on death or retirement of one partner.

15. IN CASE of the death or retiremt of the sd A., the remaining [geul] ptners or ptnr shl be at liberty, at any time within — calr months after his death or retiremt, to pchase the lease of the sd house & offices at —, if the same shl not have expired, at a valuon to be made under the arbitron clause hrinar contd, or, “by paymt to him or his repves of the sum followg, that is to say, if he shl die or retire on or bfe the — day of —, the sum of £—, & if he shl die or retire after that day, then such a sum as shl be payable, allowg for every yr wch shl have elapsed from the sd — day of — the sum of £— in diminution of the sd sum of £—.”

General provisions as to execution of deeds, &c., on death of partner.

16. UPON THE death of a ptnr, the survivg ptners or ptnr on the one hand & the repves of the deced ptnr on the other hand shl execute such deeds of covt, powers of atty, assnmnts, releases, or other instrumts as may be reasbly required for [providg for the loan of the capl of the deced ptnr upon the terms afsd, or securg the repaymt throf with such intt & remuneron for the use throf as hrinbfe provd, or for] the indemnity (a) of the repves & assets of the deced ptnr against the debts & engagements of the ptnp, or for enablg the survivg ptners or ptnr to get in the debts of the ptnp, or for the release or assnmt to the survivg ptners or ptnr of the ppty of the ptnp or any pt throf, or for any other object incidental or pper to the circes [but not so as to increase the liability of a limited ptnr], every such deed or other instrumt to be pre-

(a) No obligation to make good the indemnity arises until after a demand for payment has been made on the surviving partners: *Bradford v. Gammon*, [1925] Ch. 132.

pared & executed at the joint & equal expse of the party requiring the same & the other party or pties.

17. IN THE event of the determinon of the ptnp as to any ptner by notice under the provon in that behalf hrinbfe contd, the like provons, *mutatis mutandis*, shl have effect as are hrinbfe in clauses — to — contd, with respt to the death or bkcy of any ptner, as if the ptner as to whom the ptnp shl be determined by notice as afsd had died or become bkpt at the time of such determinon.

Provision for determination by notice by reference to provisions for death.

18. THE PROVONS hrinbfe contd as to the effect of a ptner retiring shl apply to an expelled ptner except as hrinar mentd, that is to say :—

Provision as to share of expelled partner.

(i.) So much of the amt to wch the expelled ptner shl be entitled as shl represent intt on capl & profits shl with intt thron at the rate of £3 p.c. p.a. from the date of his expulsion be pd to him by the remaining ptners as soon as conveniently may be & at the latest within 12 months after the date of his expulsion; and so much throf as shl represent capl shl remain as a loan to the remaining ptners or ptner, *continue provision for paymt by easy instalments*, p. 367, f. 10.

(ii.) The cost of all instrumts, assurances, transfers, & releases executed & made by the respective ptners for giving effect to this psnt provon shl be pd by the expelled ptner & may be deducted by the remaining ptners from any moys payable to him under this provon.

(iii.) The expelled ptner shl have no right or access to the books of the firm & no right to concur in taking any annual genl acct & valuon wch ought to have been but shall not have been taken.

[(iv.) The expelled ptner shl not within — yrs from the date of his expulsion carry on the business of — [or follow the profession of —] either alone or in ptnp with or in the service of or as assistant to any other pson or psons within — miles from the office of the firm at the date of his expulsion (a).]

19. IF ANY [genl] ptner shl die or become bkpt, or if the ptnp shl be determined as regards any ptner (whether origl or hrafter

Accruer of shares on deter-

(a) This Provision may of course be the rule in regard to retiring partners: see *post*, p. 370. f. 22.

mination of partnership as regards one partner. introduced) in accordance with the provons hrof, the shares in the net profits of the sd business to web such ptner shl have been entitled at the time of his death or ceasing to be a ptner shl (subjt to the provons hrin contd) accrue & belong to the continug [genl] ptners in the proportions in web they shl for the time being be entitled to share in profits.

Mode of valuing goodwill. **20.** IN ANY case in web it may become neey to value the goodwill of the sd business the same shl, unless orwise agrd, be taken to be equivalent in value to, *three*, times the average net yrlly profits of the sd business durg the, *three*, precedg yrs, or from the commencemt of the ptnp if less than that time.

Publication of notice of retirement of partner (b). **21.** ON THE dissolution of the ptnp or the voluntary or compulsory retiremt of any ptner, any of the ptners (includg the retiring ptner) may sign in the name & on behalf of all the ptners a pper notice of the dissolution of the ptnp, & publish the same in the London Gazette, or, "the dissolution of the ptnp as regards the outgoing ptner shl be sufftly notified by a circular addressed to the correspondents of the firm, & witht any advertisemt in the Gazette."

Outgoing partner not to carry on business (c). **22.** AN OUTGOING ptner the amt or value of whose share in the ptnp business shl have been pd or provd for in accordance with clauses — to — [or —] hrof shl not durg the remr of the term of the sd ptnp carry on or engage or be interested, directly or indirectly, in the business of — within —miles of the Town Hall of —."

Power to dissolve in case of losses. **23.** IF AT any time owing to losses or accidents, or from any other cause whatever, one-fourth of the entire capl of the ptnp shl be sunk, or reasble apprehensions shl be entertained that a call wd require to be made for further capl to the extent of £— in order to carry on the works & business of the ptnp, a majority in value of the ptners may require the ptnp to be dissolved & wound up, as if the same had expired by effluxion of time.

(b) The P. Act, 1890, s. 37, provides for this, but does not enable a partner to sign the names of his co-partners for the purpose.

(c) See *ante*, p. 365, note (b); and *Dawson v. Beeson*, 22 Ch. D. 504 (the case of an expelled partner). As to restrictions on the right of carrying on business, see Vol. I., p. 39, note. The benefit of this covenant passes with the goodwill: *Townsend v. Jarman*, [1900] 2 Ch. 698.

PROVISIONS FOR WIDOW AND FAMILY (a).

1. IF THE sd A. shl die bfe the expiron of the ptnp by effluxion of time, leavg a widow & also the sd B. & C., or either of them, survivg him, his widow shl be entitled durg her life [if the sd B. & C. or either of them shl so long live] to an annuity of £—— to commence from the death of the sd A., & to be deemed to accrue from day to day, but to be payable by eql qtrly paymts & to be seed by the deed of covt of

Provision for pay-
ment of
annuity
to widow
of one
partner
during
her life
(b).

(a) A power to charge an annuity in favour of a widow or to a father to introduce a son into the partnership after his death, whether exercised by deed or will, takes effect "under" the articles conferring the power and constitutes them a voluntary settlement; and subjects the interest so given to estate duty under the Fin. Act, 1894, in lieu of "account duty" under the earlier Act: *Att.-Gen. v. Gosling*, [1892] 1 Q. B. 545; *Att.-Gen. v. Wendt*, 43 W. R. 701; cf. *Lethbridge v. Att.-Gen.*, [1907] A. C. at p. 23.

Death
duties.

Similarly, a provision in articles of partnership between father and son under which a considerable part of the father's assets passes without consideration to the son on his father's death, has been held to amount to a voluntary settlement upon which both succession duty (*Brown v. Att.-Gen.*, 79 L. T. 572) and estate duty (*Att.-Gen. v. Boden*, [1912] 1 K. B. at p. 562) will become payable in that event.

The advancement of a son effected by his father taking him into partnership is, to the extent of the share of capital assigned to him, a disposition of property which, for the purposes of estate duty, is deemed to pass on the death of the father in the event of the latter dying on or after the 30th of April, 1910, within a period of three years from the date of the advancement (Fin. (1909-10) Act, 1910, s. 59), and in that event estate duty in respect of the share becomes payable according to the provisions of s. 7 (5) of the Fin. Act, 1894, and s. 60 (2) of the Fin. (1909-10) Act, 1910, on the price for which, in the opinion of the Commissioners, the share would at the time of the death of the father sell in open market.

Estate
duty.

There is considerable difficulty in the application of these provisions to the case of a share in a partnership; for, if the partnership were dissolved before the expiration of the three years, the share would not exist at the end of the three years and therefore would have no value. It is possible that, having regard to this difficulty, it will be held that the gift of the share is really a gift of the money value of the share at the time of the gift—a value which will be that on which the *ad valorem* stamp is assessed.

As the share does not pass to the father's executors as such, the estate duty will be charged on it. Sometimes it may be desirable to make some provision to provide against this liability: see p. 405, f. 5.

As to the liability to succession duty of successions to widows and lineal descendants, see Fin. (1909-10) Act, 1910, s. 58, and Fin. Act, 1914, s. 13, (2).

(b) This provision constitutes a trust for the widow free from the claims of the creditors of the deceased partner: *Re Flavell*, 25 Ch. D. 89; and does not *per se* constitute the widow a partner even if the annuity were made payable out of profits: P. Act, 1890, s. 2 (3) (c).

Provision
for
widow.

& at the expense of the sd B. & C., or the survivor of them, to be executed in favour of & delivered to such widow.

Provision for securing annuity to family of a deceased partner during the partnership term.

2. IF THE sd A. shd die during the sd term of — yrs leaving a widow, child, or child, his exs or ads shd be entitled to an annuity of £—— to commence from his death & to be deemed to accrue from day to day, but to be payable by eqd qtrly paymts during the residue of the sd term of — yrs, or, “during the joint lives of the sd B. & C. & the life of the survivor of them,” in case such widow or any such child shd so long live, & to be secured by the deed of covt of the sd B. & C., or the survivor of them in favour of the exs or ads of the sd A.

Power to a partner to charge annuity for his family on his death or retirement.

3. THE sd A. shd have power in the event of his retiring from the sd firm during the sd partnership term by deed executed before or within three calendar months after his retirement, or in the event of his death while remaining a partner, by will or codicil to make provision by way of annuity from & after his retirement or death (as the case may be) or any later period for himself (if living), & his wife & daughters or any of them, during their, his, or her respective lives or life or any less period, out of the share & intt of him the sd A. in the profits of the sd business to the extent & in manner following, namely, the amt to be so provided & chargeable by way of annuity shd not exceed in the whole the sum of £—— p.a. for every one p.c. of the net profits of the sd business to which the sd A. shd at the time of his retirement or death (as the case may be) be entitled & which shd in that event pass or devolve to or upon the continuing [general] partners or partner, who shd be under a personal obligation on the retirement or death of the sd A. to enter into a deed of covt to or in favour of the sd A., or his exs or ads, for securing payment of such annuity, but so that each such partner (if more than one) shd be made liable to the extent only of a proportionate part of the sd annuity corresponding with the number of such shares of profits to which he shd succeed or become entitled, the intention being that the sd annuity may be made to continue & remain chargeable & payable whether the sd business shd continue to be carried on by the sd firm or any of the partners therein or any other persons in succession to them or not. The sd annuity shd be made payable to the sd A., or his exs or ads (as the case may be) during the lives or life of himself & his wife & daughters, or the survivors or survivor of them, or any less period for which the same may be charged, by half-yearly or quarterly

paymts as the sd A. may think fit : **PROVD. ALWAYS** that if any such annuity shl have been charged by the sd A., any ptner subseqtly retirg or the repves of any ptner subseqtly dying shl be entitled to be indemnified by the continug [genl] ptners or ptner against any liability to the paymt of the sd annuity or any pt throf.

4. **THE SD A.** may in his lifetime while continug a ptner, or in the event of his retirg within three calr months after such retiremt, by deed nominate & introduce his younger son X. (who is now articled to the sd firm) as a ptner in the sd firm, provd he shl have become duly qualified : And the sd A. may in either of such events transfer & make over to the sd X. any pt or (in the latter event) the whole of the share & intt of him the sd A. in the sd business & the capl & profits throf : And if the sd X. shl not have been admitted as a ptner in the lifetime of the sd A., he the sd A. may by will or codl nominate the sd X. (if & when duly qualified) to succeed him the sd A. as a ptner for the whole or any pt of his share & intt in the sd business & the capl & profits throf : And in either of the sd cases the sd X. shl on executg a pper deed of accession defining his rights & liabilities as a ptner, become a ptner accordgly, & be in a similar position in that respt (subjt to the provons hrin contd) as the sd B., with such variations (if any) as the case may require. The sd B. shl have the like power as is hrinbfe given to the sd A. of introducng or nominatg by deed or will a son of him the sd B. to participate in or succeed to his share & intt in the sd business & the capl & profits throf or any pt throf, but such introdon or nominon shl be subjt to the approval of the sd A., if livg & remaing a ptner, or if not, of a majority of the other ptners for the time being.

Power to senior partner to introduce a son into the firm (a).

Similar power to junior partner.

5. **ANY [GENL]** ptner may at any time durg his lifetime or by his will introduce any son who shl have attained the age of, *twenty-five*, yrs [but not more than one] as a ptner into the sd firm durg the residue of the sd term for any pt or the whole of his share in the ptnp, it being intended that the share of profits of such son shl be wholly derived from the share of his father, & may transfer to such son all or such pt as the ptner introducng

Another form giving the like power to any partner.

(a) As to the construction of clauses of this nature, see *Byrne v. Reid*, [1902] 2 Ch. 735.

him may think fit of the capl of such ptner in the sd business, & so that the admission of such son shl be upon the followg terms :—First, that such new ptner shl contribute to the losses of the ptnp in proportion to his share of profits ; Secondly, that the father of the new ptner or a majority of the ptners for the time being may at any time within — yrs from his admission, by notice in writg, determine the ptnp as regards him & publish a notice of such determinon ; Thirdly, such terms (if any) as may be agrd upon betn the new ptner & his father as to the reverter to his father [or his repves] of the share or pt of the share of profits & capl assned to the son upon his death or ceasg to be a ptner [in his father's lifetime] ; Fourthly, that on his ceasg to be a ptner (subjt to any such arrangemt as last afsd) he shl have the same rights as to the paymt of his share of capl, intt, & profits as his repves wd have had if he had then died ; Fifthly, that the sd ptnp shl thenceforth durg the residue of the sd term of — yrs continue, & the provons hrin contd shl, as far as may be, apply to such son [or sons], & operate & take effect with such modifcons as the admission of such new ptner & the change of circes may require, subjt to the modifcons hrin contd ; And Sixthly, that such new ptner on being admitted shl execute a pper deed of accession bindg him to observe the provons of this deed so far as the same shl apply to him & be capable of takg effect, & containg such other provons as may be neey or pper to effect the intentions hrinbfe expressed, & any dispute or difference as to the form or contents of such deed shl be referred to arbitron.

Power for
limited
partner
to intro-
duce son
into firm.

6. The sd A. may at any time by deed during his lifetime or by his will nominate & introduce his son X. as a genl ptner in the sd firm upon the terms following : that is to say, first the sd X. shl be entitled to share in the profits of the sd business in proportion to the amt of the capl for the time being standing to his credit in the books of the firm, & in addition thto shl be entitled to such eql — pts of the profits derived from the share of the sd A. in the sd business as the sd A. may determine ; secondly, the sd X. shl not be bound to contribute any sum [a greater sum than the sum of £——] to the capl of the sd business ; thirdly, the sd X. shl contribute to the losses of the sd business in proportion to his share of the profits throf ; fourthly, the sd A. or a majority of the genl ptners for the

time being may at any time within — yrs from the admission of the sd X. by notice in writing determine the ptnp as regards him, & publish a notice of such dissolution, & thrupon the said X. shl no longer be entitled to any share of the profits derived from the share of the sd A., wch shl thenceforth go & devolve to & on the pson or psons who wd be entitled thto if the sd X. had never been admitted a ptner; fifthly, &c., *insert the fifth & sixth stipulations from p. 375, f. 5, mutatis mutandis.*

7. THE SD A. may at any time or times durg his life introduce into the ptnp, as an additional ptner or ptners, any son or sons of his, not exceedg two, & give to such son or sons the whole or any pt of the share of him the sd A. in such profits & in the capl of the ptnp, & in the event of two sons of the sd A. being so introduced, the share given by him to them shl be divided betn them in such proportions as to profits & capl as the sd A. shl think fit. If the sd A. shl die havg introduced one son only into the ptnp, then any one other son of the sd A., or if the sd A. shl die witht havg introduced any son, then any two sons of the sd A., provd such son or sons shl be steady & respectable, shl at any time or times after attaing the age of — yrs be entitled to be reced into the business by the survivg or continug ptners or ptner as an apprentice or apprentices [*or, if a solor's business, "articled clerk or clerks,"*] witht any premium or paymt [*except for the stamp or stamps on the articles*], & any such son or sons who shl be so apprenticed [*articled*], whether in the lifetime of the sd A. or afterwards, shl if he or they shl so desire within — months after the expiron or complon of such apprenticeship, [*or, "articles,"*] provd he or they resply shl have been duly qualified to practise as a — [*or, "admitted to practise as a solor,"*] be admitted into the ptnp witht premium & upon the terms of such son or sons receivg the share of the profits & capl of the sd business to wch the sd A. wd, if he had been livg & remained a ptner, have been entitled, inclusive of any additional share of profits wch shl have accrued to the sd A. by the death or retiremt of any of the sd ptners, or wd have so accrued or wd thrafter accrue to him in such event if he had been livg & remained a partner, to the intent that such son or such two sons togr shl succeed to the rights of

Provision for securing the admission of two sons of the senior partner into the business, adapted to a partnership for life. Full form.

the sd A. as regards sharg in the profits & capl of the sd business, & so that if two sons are so admitted, the sd share shl be divided betn them in such mner as they may agree, & in case either of them shl die or retire, his share shl thrupon accrue to the other of them: **PROVD** that in case any son or sons of the sd A. shl be admitted into the ptnp (whether durg his lifetime or after his death) under the provons hrinbfe contd, the ptnp shl as regards the duration throf continue durg so long as the ptners for the time being or any two of them shl live, [but subjt to determinon as regards any ptner by notice, as hrinbfe provd,] & the capl of the sd A., standg to his credit in the sd business at his death shl remain in the sd business durg the term of the ptnp, & shl be transferred or allotted to such son or sons: **PROVD ALSO** that any son or sons of the sd A. who shl be so admitted shl, with respt to the managemt of the sd business & the amt of control wch he or they shl be entitled to exercise in relation thto, be in the same position & have the same rts as the sd B. as far as the case will admit, & shl be bound to give his or their whole time & attention faithfully & diligently to the sd business & shl not be engaged in any other business, & in other respts such ptnp shl be upon the terms of this psnt ptnp as nearly as may be, the son or sons of the sd A. being (except as hrin orwise provd) placed on an eql footg with the sd B.: **PROVD ALSO** that in case the sd son or sons of the sd A. shl be admitted into the ptnp, whether in his lifetime or after his death as afsd, he or they resply shl on being so admitted enter into a pper engagemt by deed to abide by & pform the stipulons & agrmts of this deed so far as the same shl be applicable to him or them resply, & such deed or deeds shl contain such other provons as may be necy or pper to give effect to the intentions hrinbfe expressed, & in case any dispute or question shl arise as to the form or contents throf, the same shl be referred to arbitron: **PROVD FURTHER** that notwithstanding the provons hrinbfe contd, the sd B. may at any time after the death of the sd A., & bfe both his sons shl have been admitted into the ptnp as afsd, retire from carryg on the sd business, provd that he either receive no paymt, annuity, or pecuniary compenson for such retiremt, or that his succor or succors in the business enter into a deed of covt with the exs or ads of the sd A. to observe & pform the stipulons & agrmts hrinbfe contd resptg the admission of the sd son or

sons of the sd A. into the sd business, & in that event the sd B. shl not be liable for any default in the observce or pformce of the covt so entered into by such succor or successors.

8. THE SD A. may at any time while remaing a ptner by deed introduce any other pson or psons (being duly qualified) as an additional ptner or ptners to participate in the share & intt of him the sd A. in the sd business & the capl & profits throf or any pt throf (so far as not orwise disposed of), upon such terms & condons as he the sd A. may think fit, but not so as to confer upon any such new ptner or ptners any such controllg or special or exceptional powers as are conferred on him the sd A. by clauses — & —, or this psnt clause, & any premium or premiums reced by the sd A. upon any such introdon shl belong to him.

General power to senior partner to introduce new partners.

MISCELLANEOUS.

1. ANY NOTICE hby authorised or required to be given to the sd ptners or any of them, shl be suffitly given by leavg the same addressed to them or him at the countg-house or office [ppal place of business] of the sd firm.

How notices to be given (a).

2. ALL QUESTIONS weh may arise durg the continue of the sd ptnp touchg the conduct or managemt of the ptnp affairs, includg the employmt & dismissal of clerks & servants, the givg of credit, & the compoundg of debts & claims, shl be decided by the majority in number of the [genl] ptners: [And in any matters not hrin expressly provd for, the conduct of the ptnp business shl, subjt to the decision of such majority, be governed by the usage of the former firm of — & Co. existg immedly bfe the commencemt of the ptnp hby constituted.

Questions to be decided by majority of partners (b).

3. IF DURG the continue of the ptnp or at any time afterwards any dispute, difference, or question shl arise betn the

Arbitration clause (c).

(a) Except in case of fraud notice to an habitually acting partner is notice to the firm: P. Act, 1890, s. 16.

(b) Differences as to ordinary matters: *Highley v. Walker*, 26 T. L. R. 685; may be decided by a majority of the partners, but no change can be made in the nature of the business without the consent of all: P. Act, 1890, s. 24 (8).

(c) This provision does not bind a mortgagee of a partner's share: *Bonnin v. Neame*, [1910] 1 Ch. 732.

sd ptners or any of them, or their or any of their repves, touchg the ptnp or the accts or transactions throf or the dissolution or windg up throf (*d*) or the construction, meang, or effect of this deed or anything hrin contd or the rights & liabilities of the ptners or their repves under this deed or orwise in relation to the premes, then every such dispute, difference, or question shl be referred (*e*) to two arbitrators, one to be apptd by each party (*f*) or their umpire, or, "to a sole arbitrator," or, "to an official referee," psuant to the Arbitron Act, 1889 (*g*), or any statutory modificon or re-enactmt throf for the time being in force.

Mutual
release in
respect of
former
deed of
partner-
ship.

4. IN CONSON of the premes the sd A. & B. do & each of them doth hby mutually rele & discharge the other of them his exs & ads, from all claims & demands, actions, & proceedings whatsr for or in respt of the covts, agrmts, & provons contd in the deed of ptnp of the — day of — under wch the sd business has htofore been carried on, wch is intd to be wholly superseded by these psnt articles of ptnp.

(*d*) See *Vawdrey v. Simpson*, [1896] 1 Ch. 166.

Vari-
ation.

(*e*) The following addition, to be inserted here, provides that all questions are to be decided by the senior partner, or otherwise by a majority :—

"to the sole arbitramt & determinon of the sd A. if living & remaina a ptnr or in the act of retirg from the sd firm whose decision (whether inttd or not & whatever his intt may be) shl be absolutely final & binding on all pties, & if he shl have died or previously retired from the sd firm or shl be unable or unwillg to act as referee, then unless a retired ptnr or the repves of a deced ptnr shl be a party to the difference, the same shl be determined by a majority of the votes of the ptners for the time being, & such determination shl be final, And in every case not hrinbfe provd for or if the matter in dispute or difference cannot be settled in mnner afsd, then the same shl be referred to the decision of two arbitrators, &c., as above."

(*f*) See Arbitration Act, 1889, s. 6. A reference to two arbitrators, one to be named by each party, is inapplicable if there are more than two partners. In this case it will be better to make the reference to a sole arbitrator only, so as to let in the provisions of s. 5 of the Act: see Vol. I., p. 172.

Arbitra-
tion Act,
1889.

(*g*) Submissions to arbitration are regulated by the Arbitration Act, 1889. By s. 1, every submission, in the absence of expression of a contrary intention, is to have the same effect as if it had been made an order of Court: see Vol. I., p. 170, note.

PRECEDENTS

I.

ARTICLES of PARTNERSHIP *between* TWO TRADERS *for a*
 TERM of YEARS, DETERMINABLE on NOTICE. CONCISE
 FORM *relying principally upon the* PARTNERSHIP ACT,
 1890 (a). VARIATIONS *where the* PARTNERSHIP *is for*
 LIFE, DETERMINABLE on NOTICE.

THIS DEED OF PARTNERSHIP, made the — day of Parties.
 — BETN A., of, &c., of the one pt ; & B., of, &c., of the other Wit-
 pt, WITNESSETH that the sd A. & B. hby mutually covt & nesseseth.
 agree as follows :—

1. *Duration & style of partnership*, p. 341, f. 1 (c).
2. *Registration of firm under Registration of Business Names Act, 1916*, p. 342, f. 3.
3. *Power to determine partnership by notice*, p. 343, f. 6.
4. *Place of business*, p. 346, f. 14.
5. *Certificate of Registration of firm, &c.*, p. 346, f. 15.
6. *Contribution to capital*, pp. 346, 347.

(a) If the intending partners should desire to rely entirely upon the provisions of the P. Act, 1890, a King's Printer's Copy of the Act would serve the purpose of formal articles. In point of fact this is seldom or never the case. Partnership enterprises entered upon, as they sometimes are, without articles, are based on a common understanding between the parties intended to supplement where necessary their statutory rights. It is understood, for instance, that neither partner will exercise his right to determine the partnership (s. 26) to the detriment of the other, and that upon a dissolution by the death of either (s. 33) the survivor shall have a free hand to continue or dispose of the business as circumstances permit. There are few circumstances under which it would not be better that such understandings should be embodied in formal articles of partnership constituting a binding contract between the parties and enforceable against their representatives. Articles desirable.

The mutual rights and duties of partners, whether ascertained by agreement or defined by the Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing : Variation of articles by consent.
 P. Act, 1890, s. 19.

(b) The clauses referred to will for the most part require slight verbal alterations to meet the case of a partnership between two persons only.

(c) In the case of a partnership for life the variations in addition to those shown in the form referred to, will be as indicated in note (e) on next page.

7. *Incidence of outgoings*, p. 350, f. 14, saying, "All outgoings of whatever kind & expses incurred in carrying on the sd business or in any wise relating thereto shl be charged, &c."

8. *Division of net profits*, p. 352, f. 18.

9. *Drawings*, p. 353, f. 21.

10. *Attention to business*, p. 354, f. 5.

11. *Each partner to pay his private debts*, p. 355, f. 9.

12. *Negative stipulations*, pp. 355-357, sub-clauses (i.), (iii.), (iv.), (vii.), (viii.) & (ix.).

13. *Bankers*, p. 357, f. 11.

14. *Cheques*, p. 358, f. 14.

15. *Accounts to be kept*, p. 358, f. 1.

16. *Annual general account*, p. 358, f. 2.

17. *Provision for dissolution referring to P. Act, 1890 (d)*, p. 360, f. 2.

Option of purchase on dissolution by death, &c., of share of outgoing partner (e).

18. (i.) If during the continuance of the ptnp either ptner shl die, become bkpt or determine the ptnp by notice psuant to clause — hrof, the other ptner shl have the option of pchasing as from the date of the dissolution & upon the terms hrinar appearing, the share of the outgoing ptner so dying, becoming bkpt or determining the ptnp as afsd, to be exercised by giving to the outgoing ptner or his repves notice in writing of his intention in that behalf within three calr months from the date of the dissolution.

(ii.) The pchase-moy (f) shl be the amt of the share of the outgoing ptner in the capl of the ptnp as shown in his capl acct with the firm made up, if the ptnp shl have been continued

(d) In the case of a partnership for a term of years the intention usually is that upon dissolution of the partnership by effluxion of time, the provisions of the P. Act, 1890, shall have effect subject to any agreement which may then be come to between the partners. In the case of a partnership for life no such agreement is of course possible. In the latter case, therefore, the clause in the text should be recited and provision made for dissolution in any event as in note (e), *infra*.

(e) Where the partnership is for life say, "On the dissolution of the ptnp in any event the ptner other than the ptner by whose death, bkptcy or notice to determine the ptnp such dissolution shl have been effected, shl have the option, &c.", *as in the text*.

(f) Alternatively the amount to be paid may be left to arbitration as follows: "The pchase-moy shl be the fair value at the date of the dissolution of the share of the outgoing ptner in the ptnp

for a yr or more, to the only or last day for taking the annual genl acct up to wch the same shl have been continued, togr with intt in lieu of profits at the rate of £—— p.c. p.a. up to the date of the dissolution for any period of less than a yr not covered by such capl acct, but subjt to the deduction of all sums drawn by the outgoing ptner on acct of profits during the then current yr of the ptnp.

(iii.) The outgoing ptner or his repves shl be bound by the general acct from wch such capl acct shl be made up as afsd (a).

(iv.) The pchase-moy shl be payable as to so much throf as shl represent profits, upon the exercise of the sd option; & as to so much throf as shl represent capl, by —— equal instalmts at intervals of —— calr months (the first to be pd at the expiron of —— calr months from the date of the dissolution) with intt at the rate of £—— p.c. p.a. on the amt throf for the time being unpaid.

(v.) The ptner exercising the option shl secure the paymt of the pchase-moy to the outgoing ptner or his repves by deed of covt, or, “a floating charge on the assets of the sd business,” & shl indemnify the outgoing ptner or his este from all liabilities of the ptnp.

(vi.) The outgoing ptner or his repves shl do all such acts & execute all such assurances as may be necessary for vesting in the ptner exercising the option the assets (including the goodwill) & ppty of the ptnp at the date of the dissolution.

19. *Outgoing partner not to carry on competing business,* p. 372, f. 22.

20. *Notices,* p. 379, f. 1.

21. *Arbitration clause,* p. 379, f. 3.

IN WITNESS, &c.

net assets & effects [including thrin the goodwill of the business], or, ‘excepting therefrom the goodwill of the business in respt of wch nothing shl be charged,’ to be ascertained in case of dispute under the arbitron clause hrinar contained.”

(a) Cf. f. 8, *ante*, p. 366.

II.

ARTICLES of PARTNERSHIP *between Two TRADERS for a TERM of YEARS, DETERMINABLE on NOTICE, formed to continue the BUSINESS of one of them. FULL FORM. VARIATION where a PREMIUM is taken (b).*

Recitals.	<i>PARTIES, as in Prec. I., p. 381; WHAS the sd A. has for some yrs past carried on the trade or business of — at — : AND WHAS the sd A. has agrd to take the sd B. into ptnp with him in the sd business for the period & upon the terms hrinar mentd [in conson of the premium or sum of £—— wch has been pd or secd by the sd B. to the sd A. as the sd A. doth hby acknowe]. NOW THIS DEED WITNESSETH that [in conson of the premes] the sd A. & B. hby mutually covt & agree as follows :—</i>
Wit- nesseth.	
Clauses (c).	1. <i>Duration & style of partnership, p. 341, f. 1.</i> 2. <i>Registration of firm under Registration of Business Names Act, 1916, p. 342, f. 3.</i> 3. <i>Power to determine partnership by notice, p. 343, f. 6.</i> 4. <i>Power of expulsion in case of breach of duty, p. 343, f. 9.</i> 5. <i>Place of business, p. 346, f. 14.</i> 6. <i>Certificate of Registration of firm, &c., p. 346, f. 15.</i>
Capital (d)	7. <i>Contribution to capital, p. 346, ff. 1 or 2.</i> 8. <i>The leasehd premes upon wch the sd business is now</i>

(b) As to the stamp on the premium see *post*, p. 386, note (a). By taking a premium, the trader in effect realises a portion of the capital employed in his business.

(c) The clauses referred to will for the most part require slight verbal alterations to meet the case of a partnership between two persons.

Variation where premium is taken. (d) Where a premium is paid by the incoming partner in consideration of the sale to him of a share in the old business, the following clauses will be substituted for clauses 7 to 9 in the text :—

7. The ppty & assets belonging to the sd A. in connection with his sd business (the parlars whrof are specified in the first pt of the schdle hereto) shl become & be ppty & assets of the firm, & the mtge & other debts & liabilities mentd in the second pt of the sd schdle shl become & be debts & liabilities of the firm; and the sd A. shl upon the request at any time of the sd B. & at the cost of the firm convey, assn or orwise assure the sd ppty & assets in such mner as effectually to

carried on & the stock-in-trade & plant belonging to the sd business at the commencement of the ptnp, shl be held in trust for, &c., *continue as at* p. 347, f. 6.

9. The sd A., by whom the sd leasehd premes are now held for the residue of a term, &c., *continue as at* p. 347, f. 7, *down to* "covts & condons contd in the sd lease."

10. *Increase of capital*, p. 349, f. 10.

11. *Interest on capital*, p. 349, f. 11.

12. *Loans by ptnrs to the firm*, p. 349, f. 13.

13. *Incidence of outgoings*, p. 350, f. 14.

14. *Reserve fund*, p. 351, f. 17.

15. *Division of net profits*, p. 352, f. 18.

16. *Drawings*, p. 353, f. 21.

17. *Attention to business*, p. 354, f. 5.

18. *Each partner to be just, &c.*, p. 355, f. 7.

19. *Each partner to give information*, p. 355, f. 8.

20. *Each partner to pay his private debts*, p. 355, f. 9.

21. *Negative stipulations*, pp. 355-357, f. 10.

22. *Bankers*, p. 357, f. 11.

23. *Provision as to moneys received on account of firm*, p. 357, f. 12.

24. *Cheques*, p. 358, f. 14.

25. *Accounts to be kept*, p. 358, f. 1.

vest the same (subj't to the mtges & charges affecting the same resply) in the ptnrs in joint tenancy on trust for sale & as pt of their ptnp este, & in the meantime shl hold the same in trust for the firm [& shl be indemnified by the firm against the rent reserved by & all covts & condons on the pt of the lessee contd in the lease of the premes upon wch the sd business is carried on as afsd.]

8. The capl of the firm shl be the sum of £—— [namely, the sum of £——] being the estimated net value of the sd ppty & assets after deducting the sd debts & liabilities [& the sum of £—— wch shl be contributed by the sd B. by cash paymt into the —— Bank, Ltd., to the acct of the firm on or bfe the —— day of ——]. The sd capl of £—— shl in conson of the paymt by the sd B. to the sd A. of the sd premium of £—— as afsd & of the cash contribution to be made by the sd B., be credited in the books of the firm as belonging to the ptnrs in eql shares, *or*, "in the shares or proportions followg, &c."

Dissolu-
tion
clauses.

26. *Annual general account*, p. 358, f. 2.

27. *Ordinary provision for winding up on dissolution*, p. 359, f. 1.

28. *Option of purchase on dissolution by death, &c., of share of outgoing partner, as in Prec. I.*, p. 382.

Variation
in terms
of option
to pur-
chase,
where
partner is
expelled.

29. If during the continuance of the ptnp term either ptner shl be expelled psuant to clause — hrof, the other ptner shl have the option of purchasing the share of the expelled ptner in like mner & upon the same terms as he wd have had under clause — hrof in the event of the death, bkptcy, or retiremt of such ptner, except that the pchase-moy payable upon the exercise of such option upon the expulsion of a ptner shl be payable, so far as it represents capl, by — instead of — eql instalmts at intervals of — calr months (the first to be pd at the expiron of — calr months from the date of the dissolution) with intt at the rate of £—— instead of £—— p.c. p.a. on the amt throf for the time being unpaid.

30. *Outgoing partner not to carry on competing business*, p. 372, f. 22.

31. *Notices*, p. 379, f. 1.

32. *Arbitration clause*, p. 379, f. 3.

IN WITNESS, &c. (a).

Stamp on
articles of
partner-
ship.

(a) In addition to a 10s. deed stamp, *ad valorem* duty is chargeable on the amount of any premium paid as purchase-money for a share in the business. The mere fact that under the terms of the partnership agreement, the capital is to belong to the partners in shares which do not correspond with the proportion of capital contributed by each partner, or that the profits are to be shared otherwise than in proportion to the shares of capital belonging to the respective partners, does not constitute the transaction effected by the articles a sale in respect of which *ad valorem* duty is payable. A transfer of capital from father to son effected by articles of partnership in such a manner as to amount to an advancement of the latter will, nevertheless, be chargeable with *ad valorem* duty as a voluntary conveyance under s. 74 of the Fin. (1909-10) Act, 1910.

A provision in a partnership deed for the widow or family of a partner to take effect on his death constitutes a complete trust in their favour in respect of which the articles will apparently require to be stamped with an *ad valorem* stamp under the same section.

On the other hand, it is apprehended that the insertion in the articles of partnership of a mere power to charge an annuity or to introduce a son as a partner into the partnership will not require an *ad valorem* stamp. Agreements of this kind confer no rights of property; they operate merely as contracts between the partners.

III.

ARTICLES of PARTNERSHIP *between* THREE TRADERS
for a TERM of YEARS, determinable on NOTICE.
 VARIATIONS *where the PARTNERSHIP is formed to*
continue the PARTNERSHIP BUSINESS of two of them
the GOODWILL of which is vested in the SENIOR
 PARTNER (a).

THIS DEED OF PARTNERSHIP, made the — day of Parties.
 — BETN A., of, &c., of the first pt, B., of, &c., of the second
 pt, & C., of, &c., of the third pt. [WHAS the sd A. & B. have for Recitals.
 some time past carried on business as — in ptnp togr as —
 under articles of ptnp dated, &c. AND WHAS the capl of the sd
 ptnp wch remains at the sum of £—— originally fixed by the
 sd articles, or, “wch has been increased from the sum of £——
 originally fixed by the sd articles, to the sum of £——,”
 belongs to the sd A. & B. in eql shares, or as the case
 may be. AND WHAS from an acct & statemt of the assets,
 liabilities & transactions of the sd ptnp taken & made up
 to the date of this deed, short parlars whrof are contd in the
 schdle hto, it appears that the net value of the assets of the
 sd ptnp remaining after paying or providing for all debts
 & liabilities & making all pper allowances for bad debts
 & orwise (exclusive of the value of the goodwill of the sd
 business) amounts to a sum of £—— in excess of the
 sd capl sum of £——. AND WHAS the pties hto have agrd to
 accept the sd statemt of accounts as a true & correct statemt
 of the assets of the sd business & to continue the sd business
 in ptnp togr as from the sd — day of — for the period &
 upon the terms hrinar mentd to the entire exclusion of the sd
 articles hitherto subsisting betn the sd A. & B.: NOW THIS
 DEED WITNESSETH that the sd pties hto mutually covt Wit-
 & agree as follows, that is to say:— nesseseth.

[The sd articles of ptnp dated the — day of — shl be
 hby superseded.]

(a) For the purpose of these variations, which are shown in brackets,
 A. is treated as the senior, B. as the junior, and C. as a probationary
 partner. Otherwise the precedent is framed to meet the normal case of
 all three partners coming in on an equal footing.

1. *Duration & style of partnership*, p. 341, f. 2.
2. *Registration of firm under Registration of Business Names Act, 1916*, p. 342, f. 3.
3. *Power to retire from partnership*, p. 343, f. 6.
[*Power to dismiss probationary partner (b)*, p. 343, f. 8.]
4. *Power of expulsion in case of breach of duty*, p. 343, f. 9.
5. *Clause excluding s. 33 (1) of P. Act, 1890*, p. 346, f. 13.
6. *Place of business*, p. 346, f. 14.
7. *Certificate of Registration of firm, &c.*, p. 346, f. 15.
8. *Contribution to capital*, p. 346, ff. 1 or 2.

Assets of
old busi-
ness to be
adopted
by the
firm (c).

[The ppty & assets belonging to the sd A. & B. in connection with their sd ptnp business as shown in the sd statemt of accounts, shl *[where the ptnership ppty includes any land add "be held in trust for &"]* become & be ppty & assets of the firm ; & the mtge, debts & liabilities as shown in the sd statemt (including the sd sum of £—— thrin shown to be due to the sd A. & B. as profits in excess of capl of their sd business) shl become & be debts & liabilities of the firm ; & the sd A. & B. shl upon the request at any time of the sd C., while remaining a ptnr, & at the cost of the firm convey, &c., *continue as in Prec. II.*, p. 384, note (d).]

Capital
of the
firm (c).

[The capl of the firm shl be the sum of £—— namely the sd sum of £——, whrof the sum of £—— shl be credited in the books of the firm as so much capl brought in by & belonging to the sd A. & the residue, namely the sum of £——, as so much capl brought in by & belonging to the sd B. ; & the further sum of £—— wch shl be contributed by the sd C. by cash paymt into the —— Bank, Ltd., to the acct of the firm on or bfe the —— day of ——, & credited in the books of the firm as belonging to the sd C.]

9 to 25. *The same as those numbered 10 to 26 in Prec. II.*, p. 385.

Dissolu-
tion
clauses.

26. *Ordinary provision for winding up on dissolution*, p. 359, f. 1.

[*The same ; the assets & goodwill being made to vest in A. the senior partner (d)*, p. 360, f. 3.]

(b) See *ante*, p. 387, note (a).

(c) The variations in these brackets will be inserted in substitution for clause 8 in this Precedent.

(d) The variation in this bracket will be inserted in substitution for clause 26 in the above Precedent.

27. *Provision for purchase by continuing partners of the share of partner dying, &c.*, p. 363, f. 6 [with the variation in the note], or p. 365, f. 7.

28. *Provision for payment by instalments of outgoing partner's share of capital*, p. 367, f. 10, or for allowing share of capital to remain as a loan, p. 367, f. 11.

29. *Provision as to share of expelled partner*, p. 371, f. 18.

30. *Notices*, p. 379, f. 1.

31. *Arbitration clause*, p. 379, f. 3.

IN WITNESS, &c.

The Schedule above referred to.

IV.

ARTICLES of PARTNERSHIP between TWO SOLICITORS
for a TERM of YEARS determinable on NOTICE, formed
to continue the BUSINESS of one of them (a).

PARTIES, as in *Prec. I.*, p. 381; WHAS the sd A. has for Recitals.
many years been engaged in practice as a solor at — &
holds the offices of profit & appointmts specified in the schdle
hto: AND WHAS the sd A. has agrd to take the sd B. into

(a) A premium is sometimes paid by the incoming partner, the amount of which may be either the capitalised value of the share to be taken by him in the net profits and goodwill of the business, the necessary capital being found by the other partner, or may include a share in the capital employed in the business at the inception of the partnership. In the latter case, an account to date must be taken of the business; and, if the assets, though not at the time liquid, represent both capital and undrawn profits, provision may be made for the withdrawal, as circumstances permit, of so much of the assets as represent undrawn profits, the capital of the partnership being fixed accordingly.

Special provision should be made for the return of any such premium in case of the determination of the partnership before the date fixed. See generally as to the return of premiums, the P. Act, 1890, s. 40; *Belfield v. Bourne*, [1894] 1 Ch. 521.

A more convenient and probably fairer arrangement in some cases, is for the incoming partner to take immediately only a small share in the profits of the business, paying no premium at the commencement of the partnership, but with the option (see clause 16, *post*, p. 391) of purchasing a further share so soon as he has obtained a sufficient introduction to the clients of the firm.

Wit-
nessest.

ptnp with him in the sd business for the period & upon the terms hrinar mentd NOW THIS DEED WITNESSETH that the sd A. & B. hby mutually covt & agree as follows :—

1. *Duration & style of partnership*, p. 341, f. 1.

2. *Registration of firm under Regestration of Business Names Act*, 1916, p. 342, f. 3 (b).

3. *Power to determine partnership by notice*, p. 343, f. 6.

4. *Power of expulsion in case of breach of duty*, p. 343, f. 9.

5. *Place of business*, p. 346, f. 14.

6. *Certificate of Registration of firm*, p. 346, f. 15, saying “written or printed on all letters of the firm,” &c.

7. *Contribution to capital*, p. 346, f. 2.

Business
premises,
office
furniture,
&c., at
valua-
tion.

8. The leasehd premes upon wch the sd business is now carried on & the office furniture, books, boxes, safes & fittings thrin shl be held in trust for & become the ppty of the firm & shl be taken over & adopted by the firm at the sum of £—— as pt of the capl to be contributed by the sd A.

9. The sd A. by whom the sd leasehd premes are now held for the residue of a term, &c., *continue* f. 7, p. 347, down to “covts & condons contd in the sd lease.”

Addi-
tional
capital.

10. Any additional capl wch may hrafter be required for the pposes of the sd business shl (unless orwise agrd) be contributed by the ptners in the proportions in wch they shl for the time being be entitled to the net profits throf.

Interest
on
capital.

11. Each ptner shl be entitled, bfe the ascertainmt of profits, to intt at the rate of £—— p.c. p.a. on his share of the capl for the time being.

12. *Incidence of outgoings*, p. 351, f. 15, saying “in the shares in wch they are entitled to the net profits.”

13. *Appropriation to firm of profits from appointments*, p. 351, f. 16.

Appro-
priation
of pay-
ments to
existing
book
debts.

14. Any moys received for business transacted previously to or after the commencement of the ptnp from clients indebted to the sd A. for business transacted by him on their behalf previously to the commencement of the ptnp shl be appropriated & applied in the first instance in paymt of the amt owing to the sd A. in respect of the previously transacted business.

15. *Division of net profits*, p. 352, f. 18.

(b) See Registration of Business Names Act, 1916, s. 22, which defines “business” as including profession.

16. The sd B. shl have the option at any time after the — day of — of pchasing a further share in the future net profits of the sd business (not exceeding such share throf as with the share then already belonging to him shl make his aggregate share eql to one-half, *or as the case may be*, of such net profits) at a sum eql to — yrs' pchase of the average net yearly profits of the sd business attributable to the share pchased, calculated, if the ptnp shl have so long continued, during the — years immedly preceding the then last day for taking the annual genl acct, & if not, then from the commencement of the ptnp up to that day. The exercise of such option shl be notified in writing to the sd A. & the pchase moy pd to him within — calr months after such notification, & subjt to such paymt, the share of the sd B. in the net profits of the sd business shl (as from the — day of — next succeeding the exercise of such option) be increased by the addition of the further share so pchased by him, & the share of the sd A. shl be correspondingly diminished.

17. *Drawings*, p. 353, f. 21.

18. *Attention to business*, p. 354, f. 5, *adding if so intended a proviso that* "the sd A. shl not be required to act as an advocate."

19. The sd A. shl use his best endeavours to continue his tenure of the sd offices of profit & appointmts now held by him.

20. *Each partner to be just, &c.*, p. 355, f. 7.

21. *Each partner to give information*, p. 355, f. 8.

22. *Each partner to pay his private debts*, p. 355, f. 9.

23. *Negative provisions*, pp. 355-357.

24. Neither ptner shl lend any moy belonging to or give any credit on behalf of the firm in any case in wch the other shl have forbidden him to do so, nor shl he undertake any professional business of any kind on behalf of any pson or company (other than himself or his own wife or children or his, her or their trees) after having been required by the other not to do so.

25. In the event of the firm or either ptner acting as solor for or on behalf of either ptner or his wife or chln or their or his or her trees, such business shl not be charged for except as to paymts out of pocket & except as to costs recovered

Option to incoming partner to purchase further share in net profits and goodwill.

Offices of profit.

Not to undertake business objected to by other partner.

Provision for firm acting for partner or his family.

against other pties in any successful action or defence or other proceedings or out of any fund or este to wch such action or proceeding shl relate, wch sd costs shl be carried to the credit of the ptnp & be dealt with as ptnp profits.

Provision
for one
partner
acting as
solicitor
to trust
of which
the other
is trustee.

26. If either ptner shl be a tree in any matter or business & shl not be entitled to act as solor in respt of the same either by himself or his firm & be pd as solor out of the trust este or orwise, the other ptner may act as such solor on his own acct, and the ptner who is such tree shl not be entled to anyshare in the profit costs arising out of such business or matter.

27. *Bankers*, p. 357, f. **11**, adding at the end "to the credit of the firm acct. All cheques on such acct shl be drawn in the firm name & may be so drawn by either partner."

28. *Provision as to money and securities belonging to a client*, p. 358, f. **13**.

Accounts
to be
kept.

29. Pper books of acct shl be kept by the ptners & entries made thrin of all such matters, transactions, & things as are usually entered in books of acct kept by psons engaged in concerns of a similar nature, including parlars of all attendances & professional business transacted by each ptner, & of all such names, times & places as may be necessary or useful for the manifestation of the ptnp business. The sd books of acct & other books & all deeds, securities, letters, papers & documts belonging or relating to the ptnp shl be kept at the office of the ptnp & each ptner shl at all reasonable times have free access to examine & copy the same.

30. *Annual general account*, p. 358, f. **2**.

31. *Provision for dissolution*, "in any event not orwise hrin provd for," referring to *P. Act*, 1890, p. 360, f. **2**, adding proviso as to goodwill at p. 360, note (c).

Option of
purchase
on dis-
solution
by death,
&c., of
share of
outgoing
partner.

32. (i.) If during the continuance of the ptnp either ptner shl die, become bkpt or determine the ptnp by notice psuant to clause **3** hrof, the other ptner shl have the option of pchasing (as from the date of the dissolution & upon the terms hrinar appearing) the share of the outgoing ptner so dying becoming bkpt or determining the ptnp as afsd, such option to be exercised by giving to the outgoing ptner or his repves notice in writing of his intention in that behalf within — calr months from the date of the dissolution.

(ii.) The pehase-moy shl be the fair value of the share of the

outgoing ptner, to be ascertained upon an acct & statemt (a) to be taken & made out of his share of the capl & effects of the ptnp & of all unpaid intt & profits belonging to him up to the date of the dissolution, for wch ppose a valuation shl be made of any assets or effects requiring valuation (including the goodwill) of the sd business.

(iii.) The goodwill shl (unless orwise agrd) be valued at a sum eql to — times the average net yearly profits of the sd business during the — preceding yrs or from the commencement of the ptnp if less than that time, [Prov'd that in computing the average net yearly profits of the sd business for the ppose of this clause the profits derived from any office of profit or appointmt held by the outgoing ptner shl not be reckoned as profits of the business].

(iv.) The pchase-moy (when ascertained) shl be pd to the outgoing ptner or his repves by — eql instalmts at intervals of — calr months (the first to be pd at the end of — calr months from the date of the dissolution) with intt at the rate of £— p.c. p.a. on the amt throf for the time being unpaid.

(v.) & (vi.) *The same as (v.) & (vi.) in Prec. I., p. 382, clause 18.*

33. *The same as in Prec. II., p. 386, clause 29, omitting the words "so far as it represents capital."*

34. *Outgoing partner not to carry on competing business, p. 372, f. 22.*

35. If either ptner shl die or become bkpt or shl retire from the ptnp under clause — hrof, or if the ptnp shl be determined as against either ptner by notice given to him under clause — (b) hrof, all deeds, drafts & other papers relating to the business of the firm shl (if the other ptner shl elect to exercise the option of pchase contained in clause — hrof & subjt to the claims of any clients to whom the same may belong) remain in the hands of or be delivered to such other surviving or continuing ptner.

Deeds,
papers,
&c., on
death,
&c.

36. Upon the dissolution of the ptnp by effluxion of time all deeds, drafts & papers relating to the business of the firm shl (unless the client or clients to whom the same belong object) be delivered to the ptner who shl usually have attended to the business of such client or clients; or "by whom such

Deeds,
papers,
&c., on
dissolu-
tion by
effluxion
of time

(a) See *ante*, p. 364, note (d).

(b) *I.e.* the expulsion clause.

client or clients were originally introduced, and, in the case of any client or clients not originally introduced by either partner, shall be divided between the partners on an equitable footing ; " & neither partner shall in any case be entitled to solicit or accept the business of any client or clients whose papers shall have been so delivered to the other partner.

Notice
of dis-
solution.

37. On the determinon or dissolution of the ptnp either ptner or his legal psonal repve shl have power to sign in the name of the firm & publish in the London Gazette a pper notice of the dissolution of the ptnp.

38. *Notices*, p. 379, f. 1.

39. *Arbitration clause*, p. 379, f. 3.

IN WITNESS, &c.

The Schedule above referred to.

V.

ARTICLES of LIMITED PARTNERSHIP *between THREE or MORE PERSONS for a TERM of YEARS (a).*

Parties. *PARTIES*, A., *limited ptner*, 1 ; B., *general ptner*, 2 ; C., *general ptner*, 3 ; D., *general ptner*, 4. WHAS the pties hto have agrd to form a limited ptnp psuant to the Limited Partnership Act,

Recitals
(b).

Limited
Partner-
ship Act,
1907.

(a) The Limited Partnership Act, 1907, authorises limited partnerships to be formed consisting of one or more "general partners," who shall be liable for all the debts and obligations of the firm, and one or more "limited partners" who shall at the time of entering into the partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and shall not be liable for the debts or obligations of the firm beyond the amount so contributed. A limited partner may not, during the partnership, draw out or receive back any part of his contribution, he may not take any part in the management of the business, and cannot bind the firm. He may, however, by himself or his agent, inspect the books of the firm and examine the state and prospect of the business and advise with the partners thereon, and, subject to agreement and to compliance with the provisions of the Act in that behalf, may become a general instead of a limited partner.

Variation
where
limited
partner
contri-
butes
share of
assets in
existing
business.

(b) Where a limited partnership is formed to carry on, as a going concern, an old business belonging wholly or partly to the limited partner or partners, upon the footing that he or they will contribute as capital the assets of the old business, care must be taken not to contravene the provisions of s. 4 (2) of the Limited Partnership Act, 1907, requiring the capital of the limited partner or partners to be contributed (1) at the time of entering into the partnership ; (2) in cash or in the form of "property valued at a stated amount." In order that these provisions may be strictly complied with, the commencement of the partnership must be made to coincide with the date up to which the account by which the value of the assets of the business

1907, for the ppose of acquiring & carryg on in ptnp togr for the period & upon the terms hrinar mentd, the business of — now & for some years past carried on by — at —. NOW THIS DEED WITNESSETH that the sd A., B., C. & D. hby mutually covt & agree as follows:—

Witnesseth.

1. *Duration & style of partnership*, p. 341, f. 2.

Clauses (a).

2. *Registration of firm under Registration of Business Names Act, 1916*, p. 342, f. 3.

3. *Description of partners as limited & general*, p. 342, f. 4.

4. *Partnership to be registered under L. P. Act, 1907*, p. 342, f. 5.

[5. *Power for limited partner to determine partnership by notice (b)*, p. 343, f. 6.]

6. *Power for "any general ptner for the time being" to retire from the partnership*, p. 343, f. 6.

[7. *Option to limited partner to become general partner*, p. 345, f. 12.]

8. *Option to general partner to become limited partner*, p. 345, f. 11.

9. *Clause excluding s. 33 (1) of the P. Act, 1890*, p. 346, f. 13.

10. *Place of business*, p. 346, f. 14.

11. *Certificate of Registration of firm, etc.*, p. 346, f. 15.

12. *Contribution to capital*, p. 346, ff. 1 or 2.

13. *Increase of capital*, p. 349, f. 10.

14. *Interest on capital*, p. 349, f. 11.

15. *Loans by partners to firm*, p. 349, f. 13.

must be ascertained is taken. It is not, however, necessary, in order to comply with the Act, that the value of the property adopted by the firm should be stated in the Articles. There is, therefore, no objection if the assets brought in by the limited partner do not constitute his total contribution to capital, to a provision for their future valuation as in f. 6, p. 347, the amount of such valuation being subsequently included in the statement made to the registrar pursuant to s. 8 of the Limited Partnership Act, 1907. For forms of recital and clauses relating to capital where the net assets of an existing partnership business constitute the sole contribution of the partners concerned in it to the capital of the new firm, see the variations in brackets in Prec. III., ante, p. 387.

(a) The clauses referred to are for the most part such as would be applicable to an unlimited partnership. The variations necessary in the case of a limited partnership, where not mentioned in the text, will be found in the clauses themselves or indicated in the notes.

(b) This clause may be inserted where the interest of the limited partner largely predominates. In other cases, provision may be made for the limited partner becoming a general partner with power to retire as such.

16. *Incidence of outgoings*, p. 350, f. **14**, saying at the end, "shl be borne by the ptners, &c., but so that the liability of the sd A. in respt of such deficiency while remaing a limited ptner shl not extend beyond the sum of capl for the time being standg to his credit in the books of the firm."

17. *Division of net profits*, p. 352, f. **18**.

18. *Drawings (c)*, p. 353, f. **21**.

19. *Limited partner not to interfere in management*, p. 354, f. **3**.

20-29. *The same as those numbered 17 to 26 in Prec. II.*, p. 384 (*d*).

30. *Ordinary provision for winding up on dissolution*, p. 359, f. **1**.

31. *Provision for purchase by continuing general partners of the share of a general partner dying, &c.*, p. 363, f. **6**.

32. *Provision for payment by instalments of outgoing partner's share of capital*, p. 367, f. **10**, or for allowing share of capital to remain as a loan, p. 367, f. **11**.

33. *Power for limited partner to introduce a son into the firm (e)*, p. 376, f. **6**.

34. *Arbitration clause*, p. 379, f. **3**.

35. The costs of & incidental to this deed (including the costs of stamping the statemt to be delivered to the Registrar in compliance with s. 8 of the Limited Partnership Act, 1907) shl be pd by the pties hto in eql shares, or as may be agreed (*f*).

(c) Having regard to ss. 4 (3) and 9 (2) of the Limited Partnership Act, 1907, it will not generally be advisable to extend to the limited partner or partners the right to make drawings on account of profits. In some cases a clause to the following effect may, however, be inserted: "The sd A. while remaing a limited ptner shl be entitled to draw out of the sd business in anticipon of his share of profits, & to be accounted for at the next yrly [half-yrly] division of profits, such sums at such times as the genl ptners shl from time to time authorise, such authority to be in writg & signed by all the genl ptners." See another form, *post*, p. 408, f. **7**.

(d) The variations for a limited partnership will be found indicated in the forms referred to.

(e) The provisions on pp. 373 *et seq.* for payment of an annuity to a widow and for introducing a son into the business, so far as they involve a withdrawal of capital are inapplicable to the case of the widow or son of a limited partner.

(f) It seems that these costs cannot be paid out of capital so far as contributed by the limited partner.

36, &c. *Add any of the other clauses above that may be appropriate.*

IN WITNESS, &c.

VI.

ARTICLES of LIMITED PARTNERSHIP between THREE PERSONS formed for the purpose of continuing the BUSINESS and ADVANCING the INFANT CHILDREN of two of them (a).

PARTIES, A., general ptner ; B., general ptner ; C., limited ptner.

WHAS THE sd A. & B. have for some time past carried on business as — in ptnp together under the style or firm of — pursuant to articles of ptnp dated, &c., and are entitled under the sd articles to the capital & profits of the sd business in equal shares. AND WHAS from an acct & statemt of the assets, liabilities & transactions of the sd ptnp taken & made up to the date of this deed (short parlars whrof are contained in the Schedule hto), it appears that the assets of the sd ptnp remaining after paying or providing for all debts & liabilities & making all pper allowances for bad debts, & orwise amt in value to a sum of £ — whrof the sum of £ — represents capital, & the sum of £ — represents undrawn profits of the sd business. AND WHAS the sd A. & B. being desirous of making an immediate substantial provision out of the sd business for their respve chln hrinar named have agreed with the sd C. that — equal — shares of the sd capital sum of £ — shl forthwith be appropriated & set apart for that purpose & shl become vested

(a) See notes to Prec. V. The scheme of this precedent is to enable persons engaged in business to advance infant children, out of assets employed in the business. The share intended for the children is vested irrevocably in a trustee by bringing him into partnership as a limited partner. As each child attains 21 or being a daughter marries under that age, he or she will become a limited partner in respect of the share of capital held in trust for him or her, and with the consent of the general partners may ultimately become a general partner in the business. The trustee will therefore automatically drop out of the partnership as soon as the youngest child attains 21, and his or her share has been duly assigned. See Limited Partnership Act, 1907, s. 6 (5) (b). The general partners will not be assessable to income tax in respect of the settled shares. See *post*, sub-tit. Settlements (Personal), note.

in the sd C. to be retained by him as a limited ptner in the sd business upon the terms & subj to the stipulations hrinar expressed to the intent that the share of the sd business to be acquired by the sd C. hrunder shl be held by him upon the trusts & with & subj to the powers & provisions hrinar declared & contained concerning the same. NOW THIS DEED WITNESSETH that the sd A., B., & C. hby mutually covt & agree as follows :—

1. THE SD articles of ptnp dated, &c., shl be hby superseded.
2. *Duration and style of partnership*, p. 341, f. 2.
3. *Registration of firm under Registration of Business Names Act, 1916*, p. 342, f. 3.
4. *Description of partners as limited and general*, p. 342, f. 4.
5. *Partnership to be registered under Limited Partnership Act, 1907*, p. 342, f. 5.
6. *Power for “ either of the sd general ptners ” to retire from the partnership*, p. 343, f. 6.
7. *Clause excluding s. 33 (1) of the P. Act, 1890*, p. 346, f. 13.
8. *Place of business*, p. 346, f. 14.
9. *Certificate of registration, &c.*, p. 346, f. 15.
10. THE PPTY & assets belongg to [if the ptnership assets include any land add “ or held in trust for ”] the sd A. & B. in connection with the sd business at the date of this deed, as shown in the sd account & statemt shl become & be ppty & assets of [and held in trust for] the firm ; & the mtge debts & liabilities as shown in the sd account & statemt, & the sd sum of £—— to which the sd A. & B. are entitled as undrawn profits as afsd shl become & be debts & liabilities of the firm.
11. THE CAPITAL of the firm shl be the sum of £—— being the estimated net value as shown in the sd account & statemt of the sd ppty & assets after deducting the sd debts & liabilities & deducting also the sd sum of £ ——, representing undrawn profits as afsd.
12. THE SD capital shl be credited to the sd ptners in the books of the firm in the shares or proportions & in mner followg, namely, the sum of £ —— (being —— equal —— pts throf) as so much capital brought in by & belongg absolutely to the sd A., the sum of £ —— (being —— equal —— pts throf) as so much capital brought in by & belongg absolutely to the sd B., & the residue namely the sum of £ —— (being the remaining ——

equal — pts thrf as so much capital brought in by the sd C., & held by him pursuant to the recited agreemt in that behalf upon the trusts & with & subj to the powers hrinar declared concerning the same.

13. (i) THE SD C. shl hold the share in the capital of the firm, so to be credited to him as afsd and all intt & profits to wch he may become entitled in respect throf under the provons of these presents Upon trust for the infant children of the sd A. & B. resply in the shares or porportions followg, namely, As to — equal — pts throf, IN trust for M. & N. sons of the sd A who are — & — yrs of age resply as tenants in common in equal shares : AND AS to the remaining — equal pts throf In trust for X. a son, & Y. a daughter of the sd B. who are — & — yrs of age resply as tenants in common in equal shares (b).

(ii) UPON ANY child of either of them the sd A. or B. attaing the age of 21 yrs or in the case of the sd — (*daughter*) marryg under that age (c), the share in the capital of the firm hrinbfe directed to be held in trust for him or her shl forthwith be assigned by the sd C. to him or her, AND UPON any such assignmt the assignee shl become a limited ptner in the sd business with all the rights of the sd C. in respect of the share so assigned to him or her.

(iii) ANY CHILD of the sd A. or B. who shl have beomce a limited ptner under the provon in that behalf hrinbfe contd may at any time thrar with the consent of the sd A. & B., or the survor of them & after the death of the survor of them with the consent of the general ptner or ptners for the time being become a general instead of a limited ptner.

14. *Increase of capital*, p. 349, f. 10.

15. *Interest on capital*, p. 349, f. 11.

16. *Incidence of outgoings*, p. 350, f. 14, *saying at the end* “ shall be borne by the ptners, &c., but so that the liability of any limited ptner in respect of such deficiency shl not extend

(b) The trusts of this clause must of course be adapted to meet the circumstances of the case. The share of each child may be made defeasible on death under 21, but in that case an express power of maintenance would be necessary.

(c) There appears to be no objection to an infant becoming a limited partner, though there must be at least one general partner of full age to hold any land belonging to the firm : L. P. Act, 1925, s. 19.

beyond the sum of capl for the time being standing to his or her credit in the books of the firm."

17. *Division of net profits*, p. 352, f. **18**.

18. *Drawings*, p. 353, f. **21**.

19. *Limited partners not to interfere in management*, p. 354, f. **3**, saying "Neither the sd C. nor any other limited ptner shl, &c.

20. *Attention to business*, p. 355, f. **6**, saying "The sd A. & B. shl give, &c."

21. *Negative stipulations*, pp. 355-357, f. **10**, sub-clauses (i), (vi), & (x).

22. *Bankers*, p. 357, f. **11**.

23. *Accounts*, p. 358, f. **1**.

24. *Annual general account*, p. 358, f. **2**.

25. *Provision for winding up on dissolution*, p. 360, f. **2**.

26. *Provision for death or voluntary retirement*, p. 366, f. **9**.

27. *Arbitration Clause*, p. 379, f. **3**.

28. *Costs, &c.*, as in *Prec. V.*, ante, p. 396.

IN WITNESS, &c.

Schedule.

VII.

DECLARATION of TRUST of FREEHOLD and LEASEHOLD
PROPERTIES by TWO PARTNERS in favour of the FIRM.
To accompany a PARTNERSHIP DEED (a).

Parties. Recitals. Partner- ship. Title.	THIS DECLARATION OF TRUST made, &c. <i>PARTIES</i> , A. & B., 1; A., B., & C., 2. WHAS the sd A. & B. lately carried on the business of, &c., at —, in ptnp togr, & have recently admitted the sd C. into ptnp with them in the sd business: AND WHAS the sd A. & B. are the este owners in respt of the fee simple & the terms subsistg in the freehd & leasehd ptpies
--	---

(a) This deed requires only a 10s. stamp, as the money paid by the incoming partner is not a premium, but is brought into the joint stock as his contribution to the capital. The equitable interest created by this deed should be registered as a general equitable charge under the L. C. Act, 1925, s. 10 (1), Class C, and can be overridden on sale by the trustees of a disposition in trust for sale made by the estate owners under s. 2 (2) of the L. P. Act, 1925.

wch are resp'y described & comprised in the first & second parts of the schdle hto as pt of the ppty & assets of the sd late ptnp, subj't to the mtges affectg the greater pt throf wch are mentd in the third part of the sd schdle: AND WHAS by the terms of the sd new ptnp with the sd C. it was agrd that the sd freehd & leasehd ppties (among other assets) shd become pt of the ppty & assets or joint stk of the sd new firm, subj't to the mtges affectg the same as afsd, & that each of them the sd A. & B. shd be credited in the ptnp books with the sum of £—— in respt throf as capl brought in by him, & that the sd C. shd bring in the sum of £—— in cash into the sd joint stk as his share of the capl of the sd ptnp & shd be credited therewith in the sd ptnp books in like mner: AND WHAS it has been also agrd that the sd freehd & leasehd premes shl be held in trust for the sd A., B., & C. as ptnp etste in mner hrinar expressed: NOW THIS DECLARATION made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows: The sd A. & B. shl henceforth stand possessed of the sd freehd and leasehd ppties mentioned in the sd schdle on trust to sell the same at the direction of the sd A., B., & C. or the survors or survivor of them with pwr at the like direction to mtge all or any of the sd ppties & shl out of the moys arisg from any such sale pay the costs throf or orwise in respt of the premes & shl hold the residue of such sale moys & the rents & profits of the sd ppties or the unsold pts throf until sale UPON TRUST for the sd A., B., & C. absolutely as pt of their ptnp ppty. IN WITNESS, &c.

Terms of
Partner-
ship.

Agree-
ment.

Wit-
nesseth.

Schedule.

VIII.

DEED *vesting the LEGAL ESTATE in PARTNERSHIP PROPERTY in OLD and NEWLY ADMITTED PARTNERS (a).*

THIS DEED OF APPOINTMENT made, &c., between A., B., & C., *old partners*, 1; A., B., C., & D., *new partners*, 2.

(a) See L. P. Act, 1925, ss. 34 (2), 36 (1), and Vol. I. p. 431. The partnership arrangements are not recited so as to avoid bringing them on the title. The legal estate cannot be held by more than four partners. The power to appoint an additional trustee is given by the T. Act, 1925, s. 36 (6).

WHAS under or by virtue of s. 39 of the L. P. Act, 1925, & the transitional provons of the sd Act incorporated thrwith *or as the case may be* the ppty mentd in the Schedule hereto became vested in the sd A., B., & C. in fee simple upon the staty trusts for sale or orwise in the sd Act mentd or referred to: AND WHAS the sd A., B., & C. are desirous of appointg the sd D. to be an additional tree of all the sd ppty: NOW THIS DEED WITNESSETH as follows:

Appointmt by A., B., & C., under the statutory power of D., as in Vol. I. Prec. VIII. p. 144.

Schdle.

IX.

EXTENSION of TERM of PARTNERSHIP (b) by DEED endorsed on or appended to (c) the ARTICLES.

Recitals.

Expira-
tion of
term.

Agree-
ment.

Wit-
nesseth.
Cove-
nant.

PARTIES, A., 1; B., 2; C., 3. WHAS the term of — yrs weh was by the within [above] written articles of ptnp fixed for the duration of the ptnp thereby agrd to be entered into, will expire on the — day of — next: AND WHAS the sd pties hto have agrd to continue the sd ptnp for the further term of — yrs from the sd — day of — in mner [& subjt as] hrinar expressed: NOW THIS DEED WITNESSETH, that each of them the sd A., B., & C. hby jointly & severally covts with the others of them in mner followg, that is to say, That they the sd A., B., & C., & the survors of them will remain & continue ptners togr in the within [above] mentd trade or business for the further term of — yrs, to be computed from the sd — day of — next, if they or any two of them shl so

A vesting declaration is unnecessary as it will be implied: T. Act, 1925, s. 40 (1) (b).

(b) If the partnership is limited, a statement specifying the nature of the change effected by this deed must be sent to the registrar within seven days: see Limited Partnership Act, 1907, s. 9.

(c) As to appending deeds to prior deeds, see the L. P. Act, 1925, s. 58, and *post*, p. 403, note. As to the effect of continuing the business after the expiration of the term without fresh articles, see P. Act, 1890, s. 27; *Neilson v. Mossend Iron Co.*, 11 App. Cas. 298; *Daw v. Herring*, [1892] 1 Ch. 284; *Brooks v. Brooks*, 85 L. T. 453.

long live, upon such & the same terms & condons & subjt to such & the same provons & agrmts [except & subjt as hrinar mentd] as are in & by the within [above] written articles of ptnp expressed & contd in relation to the ptnp thereby constituted, & so that all such terms, condons, provons, & agrmts, shl [subjt as hrinar mentd] remain in force & take effect in like mner as if the sd ptnp had been origilly entered into for the full term of — yrs, instead of the sd term of — yrs: Provd ALWAYS, & it is hby agrd as follows:—

To continue partnership.

1. IF AT any time any change is made or occurs in the particulars already furnished [or, in consequence of the change to be made pursuant to clause — hrof in the [business name] [general nature of the business] [principal place of business] of the firm, required to be furnished (a)] for the purpose of registration under the Registration of Business Names Act, 1916, a statemt, &c., *continue as in f. 3, ante, p. 342.*

Compliance with Business Names Act, 1916.

2. 3 *et seq.* Insert such modifications as may be desired in the terms of the ptnp, and add f. 15, *ante*, p. 346, relating to the certificate of registration, &c. IN WITNESS, &c.

X.

DEED of ACCESSION on the ADMISSION of a SON of a PARTNER into the FIRM pursuant to a PROVISION contained in the ARTICLES of PARTNERSHIP. VARIATIONS where the deed is ENDORSED on or ANNEXED to the ARTICLES (b).

PARTIES, A., father, 1; B. & C., two other old ptnrs, 2; Recitals. D., "son of the sd A.," 3. WHAS by certn articles of ptnp

(a) See Registration of Business Names Act, 1916, ss. 3 (1) and 6.

(b) If the deed is endorsed or actually annexed, the recital of the articles will be omitted, and they will be referred to as "within, or, 'above' written"; the other consequential alterations will be obvious. If the deed is not actually annexed, it may be connected with the articles by adding after the parties "suppl to a deed of ptnp (hrinar called the ppal deed) dated, &c., & made, &c." An incoming partner does not, of course, become liable to the debts previously incurred: P. Act, 1890, s. 17.

Variations for endorsed or annexed deed.

Articles of partnership.	(hrinar called the articles) dated, &c., the sd A., B., & C. entered into mutual covts, amongst other things, that they wd become & remain ptners in the trade of —, under the firm of —, for the term of — yrs, from the — day of —, <i>continue the recital, setting out the clauses as to capital, division of profits, the power to any partner to introduce a son, & the restrictive condons (if any) imposed on such introduction, & the</i>
Title to capital.	<i>direction as to a deed of accession :</i> AND WHAS the sd A., B., & C. have carried on the sd business up to the psnt time accordg to the provons of the articles, & they are now entitled to the capl of the sd ptnp, consistg of, &c., in the shares followg, that is to say, the sd A. to —, &c. : AND WHAS in psuance of the provons contd in the articles as afsd the sd A. is desirous of introducng the sd D. as a ptnr into the sd firm for the residue of the sd term & assng to him one eql fourth pt of the share of him the sd A. in the sd ptnp, but subjt to the restrictions & provons hrinar contd ; NOW THIS DEED made in psuance of the sd provons contd in the articles WITNESSETH & the sd A., B., C., & D. hrby mutually covt & agree as follows :
Desire to introduce son.	1. THE SD A., with the consent (hby testified) of the sd B. & C., doth hby introduce the sd D. as a ptnr into the sd firm, upon the terms & subjt to the restrictions & provons hrinar contd.
Wit-nesseth.	2. THE SD A. hby assns unto the sd D. one eql fourth pt of the share of him the sd A. in the capl, stk in trade, assets, goodwill, & profits of the sd firm as from the — day of —, To HOLD the same UNTO the sd D. absolutely, subjt as hrinar mentd.
Intro-duction.	3. THE SD A., B., C., & D. will, as from the — day of —, be & remain ptners in the sd trade or business of — for the residue of the sd term of — yrs, upon the terms & subjt to the agrmts & provons contd in the articles, with such variations as are rendered neey by the introdcon of the sd D. as a ptnr & the assnmt to him of the sd one-fourth pt of the share of the sd A. as afsd & the provons hrinar contained, & will observe & pform the sd agrmts & provons, with such variations as afsd, in the same mner (as far as circes will admit) as if the sd D. had origilly been a party to the articles, & the provons of these psnts had been embodied thrin.
Assign-ment of share. Haben-dum to son.	4. IF AT any time any change is made or occurs in the particulars already furnished or, in consequence of the admission
To be partners.	

into the firm of the sd D., required to be furnished (a), for the purpose of registration under the Registration of Business Names Act, 1916, a statement, &c., *continue as in f. 3, ante*, p. 342.

5. THE SD D. shl be at liberty to charge the share hby assned to him with the amt of este duty (if any) wch shl become payable by him in respt throf upon the death of the sd A. within three yrs from the date of this deed togr with intt on the sum so charged at such rate as the sd D. shl think fit.

Power to son to charge his share with payment of estate duty (b).

6. *Insert any other special provisions & restrictions affectg the new ptner.*

7. *Certificate of Registration, &c., f. 15, ante*, p. 346.

IN WITNESS, &c.

XI.

DEED for EXECUTION *upon* CONVERSION of an EXISTING PARTNERSHIP into a LIMITED PARTNERSHIP.

PARTIES, A., 1; B., 2; C., 3; D., 4. WHAS the sd A., B., C., & D. are now carryg on business as — in ptnp under the style or firm of — & Co. psuant to articles of ptnp (hrinar

Recitals. Articles. of partnership.

(a) See the Registration of Business Names Act, 1916, ss. 3 (1) (d) and 6.

(b) See *ante*, p. 373, note (a). If so intended the following covenant by the father for payment of estate duty may be inserted instead of the clause in the text: "The sd A. hby covts with the sd D. that if the sd A. shl die within three yrs from the date of this deed & if at the time of such death the sd D. shl be carrying on business in ptnp psuant to the sd articles & this deed or psuant to the same as modified by any power contained in the articles, the exs or ads of the sd A. will pay to the sd D. the amt of any este duty & intt thron then payable by the sd D. in respt of the share hby assned to him."

Capital of part- nership.	called the old articles), dated, &c., whereby it was agrd that the sd pties hto shd become & remain ptners in the sd business for the term of — yrs from the — day of — [subjt to determinon as thrin mentd] [& further that the sd A. might at any time on or after the — day of — by notice, &c., <i>continue recital of provision for conversion of ptnp into limited ptnp.</i>] AND WHAS the capl of the firm was fixed by the old articles & now remains at a sum of £—— (a) & belongs to the sd ptners in the shares or proportions followg, that is to say, as to the sum of £——, pt throf, to the sd A., as to the sum of £—— further pt throf to the sd B., &c., or “as to one eql share throf to the sd A., &c.”
Agree- ment for conver- sion.	AND WHAS the sd ptners have agrd to convert the sd ptnp into a limited ptnp upon the terms hrinar mentd. [AND WHAS psuant to the sd provon in that behalf contd in the old articles, the sd A. has given notice of his intention to retire from active participation in the managemt & control of the sd ptnp business & to become a limited ptner.]
State- ment of accounts.	AND WHAS from an acct & statemt of the assets, liabilities & transactions of the sd ptnp taken & made up to the date of this deed (b) (short parlars whrof are contd in the schdle hto), it appears that the assets of the sd ptnp remaining after payg or providg for all debts & liabilities & makg all pper allowances for bad debts & orwise amt in value to a sum considerably in excess of the sd sum of £—— [constituting the psnt capl of the sd firm] or “to a sum of £——.”
Adver- tisements made, &c.	AND WHAS in psuance of the sd agrmt, advertisemts have been issued of the sd intd conversion in compliance with s. 10 of the Limited Partnership Act, 1907, & a statemt intd to be delivered to the registrar in compliance with s. 8 of the same Act has been prepared & signed by the sd ptners.
Wit- nesseth.	NOW THIS DEED WITNESSETH that in psuance of the sd agrmt [psuant to the provons contd in the old

(a) Where the capital has been increased, say “wch was fixed by the old articles at a sum of £—— has since been increased & now consists of a sum of £—— & belongs, &c.”

(b) Where capital has been lost it must be reduced on the occasion of registration and the account should be taken up to the date of registration which is intended to be effected upon the execution of the above deed. Where, however, there is clearly a sum in excess of capital, divisible as profit, the account may for convenience be expressed to be taken and made “up to the — day of — last past.”

articles] the sd A., B., C. & D. hby mutually covt & agree as follows :—

1. THE PTNP shl forthwith be registered as a limited ptnp consistg of the sd A. as a limited ptner, & the sd B., C. & D. as genl ptners ; & if at any time, &c., *continue as in f. 5, ante*, p. 342, *saying* “ in compliance with s. 9, of the Limited Partnership Act, 1907.”

Partner-ship to be regis-tered as limited.

2. If at any time any change is made or occurs in the particulars already furnished for the purpose of registration under the Registration of Business Names Act, 1916, a statemt, &c., *continue as in f. 3, ante*, p. 342.

Com-pliance with Business Names Act, 1916. Capital (c).

3. THE CAPL of the ptnp shl remain at the sum of £—— fixed by the old articles, whrof the sd A. shl contribute out of his share in the ptnp assets the sum of £——, the sd B. the sum of £——, the sd C. the sum of £——, & the sd D. the sum of £——, *or say in each case* “ —— eql —— pts,” & wch shl belong to the sd ptners resply in the shares or proportions in wch they shl have resply contributed the same, *or as the case may be*.

4. THE SD A. shl not take pt in the managment of the ptnp business, & shl not have power to bind the firm ; but the sd business shl during the residue of the ptnp term be carried on by the sd B., C. & D. or the survors or survivor of them as genl ptners or ptner in the name of the firm, & clauses —— to —— of the old articles shl be modified accordgly. PROVD ALWAYS that the sd A. may by himself or his agent at any time inspect the books of the firm & examine into the state & prospects of the ptnp business, & may advise with the ptners thron.

Manage-ment (a).

[5. THE SD A. shl be entitled to dissolve the ptnp by notice in mner provd by clause —— of the old articles.]

Power for limited partner to dis-solve (b). Cancellation of clauses

6. THE SD A. shl not be entitled to retire from the firm by notice psuant to clause —— of the old articles, nor shl the ptnp be liable to be determined as against him by notice psuant to

(c) Where capital has been lost, say “ The capl of the ptnp shl be reduced to the sum of £—— (being the psnt estimated value of the ptnp assets as shown by the statemt of accts contained in the schdle hto), whrof, &c.,” *as in the text*.

(a) See Limited Partnership Act, 1907, s. 6 (1).

(b) See Limited Partnership Act, 1907, s. 6 (5) (c).

providing
for deter-
mination
of part-
nership
as re-
gards
limited
partner
(d).

Draw-
ings by
limited
partner
(e).

Per-
mitted
varia-
tions
from L.
P. Act,
1907.
Applica-
tion of
old
articles.

Costs (f).

clause — or — of the old articles; & the provons of clauses — to — (c) of the old articles shl be read & construed so as to apply exclusively to the case of a genl ptner dying, becomg bkpt, or ceasing to be a ptner, & to provide for the pchase of the share of such ptner by the remaing genl ptners or ptner solely.

7. THE SD A. shl not be entitled under clause — of the old articles to draw out of the sd business any sum in antcipon of his share of profits witht the written consent thereto of all the genl ptners: PROV'D that no genl ptner shl withhold his consent unless in his opinion the sum required to be drawn by the sd A. shl be in excess of his share in the profits for the time being of the sd business.

8. *Insert any permitted variation from the Limited Partnership Act, 1907, s. 6 (5).*

9. *Certificate of Registration, &c., f. 15, ante, p. 346.*

10. SUBJT TO the varions & modificons hrin contd the old articles shl be read & construed with this deed as the articles of ptnp of the sd firm: PROV'D ALWAYS that nothing contd in the old articles shl be construed as an agrmt betn the ptners to exclude the provons of paragraphs (a) (b) (c) (d) [& (e)] of sub-s. 5 of s. 6 of the Limited Partnership Act, 1907.

11. THE COSTS of & incidental to this deed (includg the cost of stampg the statemt to be delivered to the Registrar in compliance with s. 8 of the Limited Partnership Act, 1907) shl be pd out of the assets of the ptnp, or, " by the pties hto in eql shares," or as may be agreed.

IN WITNESS, &c.

The Schdle above referred to.

(c) *I.e.*, the clauses relating to the payment out of the share of an outgoing partner: see Limited Partnership Act, 1907, s. 4 (3).

(d) The case of the death or bankruptcy of a limited partner is provided for by the Limited Partnership Act, 1907, s. 6 (2).

(e) Having regard to the penalty imposed by the Limited Partnership Act, 1907, s. 9 (2), the general partners should be scrupulously careful that no payment should be made to the limited partner out of capital, *i.e.*, in reduction of the amount contributed by him; see another form, *ante*, p. 396, note (c).

(f) If in the case mentioned in note (a) the costs are intended to be paid out of the assets, they must be comprised in the scheduled statement and mentioned as having been provided for in the recital as to the present value of the assets. The more convenient and, having regard to the risk incurred by over-estimating the value of the assets, the safer plan in such a case is to direct the costs to be borne by the parties individually.

XII.

AGREEMENT for SALE by a RETIRING PARTNER with the CONCURRENCE of the CONTINUING PARTNERS of his SHARE in the PARTNERSHIP to an INCOMING PARTNER. VARIATIONS where the continuing PARTNERS do NOT CONCUR (g).

PARTIES, A., retiring ptner, 1 ; [B. & C., continuing ptners, 2] ; Parties. D., incomg ptner, 3.

1. THE SD A. [with the approval hby testified of the sd B. & C.] agrees to sell, & the sd D. agrees to pchase, all the share & intt of the sd A. in the goodwill of the business of — as the same is now carried on by the sd A. in ptnp with [the sd] B. & C. under the firm of — & Co., psuant to articles of ptnp dated, &c., & in the assets, ppty & capl of the sd ptnp & in the profits throf as from the — day of —, *the last day of takg the annual genl acct.*

Agreement for sale.

2. THE PCHASE-moy shl be the sum of £— & a further sum eql to what wd be the share of profits of the sd A. as from the sd — day of — to the day hrin mentd for complon, calculated accordg to the rate of profits durg the yr endg the — day of — last as appearg from the genl acct taken on that day by the firm ; but the sd D. shl be entitled to deduct from the pchase-moy all moys now already drawn out or at any time bfe complon to be drawn out by the sd A. in anticipon of his share of profits for the current year.

Consideration.

(g) As to the effect of the assignment by general and limited partners respectively of their shares, see *ante*, p. 356, note (e).

By the Stamp Act, 1891, s. 59 (1), as amended by the Rev. Act, 1909, s. 7, in the case of a contract, wherever made, for the sale of any *equitable* estate or interest in any property, or for the sale of *any* estate or interest in any property, except (*inter alia*) land or goods, the *ad valorem* sale duty is chargeable on the contract instead of on the conveyance. Duty on equitable interests, and goodwill, &c., was sometimes avoided by dispensing with a formal conveyance, but this cannot now generally be done unless a written contract is also dispensed with : see *post*, p. 412, note. Probably in a case like the present, where the price to be paid is not ascertained, the agreement must be stamped with a 6d. or 10s. stamp, as the case may be, and the conveyance presented for stamping under s. 59 (5), with the *ad valorem* duty, see also Vol. I., sub-tit. Miscellaneous Precedents. As to stamp duty in respect of the covenant of indemnity, see *post*, p. 415, note (a).

Stamp on contracts for sale.

Comple-
tion and
convey-
ance.

3. THE PCHASE shl be completed on the —— day of —— at the office of Messrs. —— the solors of the sd A. [B. & C.], at wch time & place the sd A. shl upon paymt of the pchase-moy (subjt to such deduction (if any) as afsd) execute a pper assmnt of the sd premes to the sd D., with such powers of atty & other provons as may be pper [& the sd B. & C. shl concur in such assnmnt]. If from any cause whatever (other than the wilful default of the sd A.) the pchase shl not be completed on or bfe that day the sd D. shl pay to the sd A. intt on the pchase-moy (after makg such deductions as afsd) at the rate of £—— p.c. p.a. from that day until complon.

In-
demnity
(a).

4. PPER INSTRUMTS shl be executed for the indemnity of the sd D. by the sd A. from all the debts, liabilities, & engagemts of the firm (if any) entered into, accepted, or given bfe the sd —— day of —— wch do not appear in the books of the sd ptnp & for the indemnity of the sd A. & his repves against all the out-standg debts, liabilities, & engagemts of the firm wch appear in the books of the ptnp.

Provision
for deed
of acces-
sion.

5. THE SD B., C., & D. shl upon complon of the sd pchase, [If the continug ptners are not pties to the agrmt say, "THE SD D., shl if & when required by the sd B. & C."] execute a deed of accession containg mutual covts by the sd B., C., & D., to be & remain ptners in the sd business of —— for the residue of the term of —— yrs from the —— day of —— upon the terms & subjt to the agrmts & provons contd in the sd articles with such varions as are rendered necy by the introdnon of the sd D. as a ptner & the assmnt to him of the share & intt of the sd A., & for the pformce & observee of the sd agrmts & provons (with such varions as afsd) in the same mner as far as circes will admit as if the sd D. had origilly been a party to the sd articles.

State-
ment to
be de-
livered to
registrar.

6. A STATEMT specifyg the nature of the change in the constitution of the sd ptnp effected by this agrmt shl forthwith be furnished to the Registrar in compliance with s. 6 of the Registration of Business Names Act, 1916 [& s. 9 of the Limited Partnership Act, 1907 (b)].

(a) An indemnity clause is not appropriate in the case of an assignment of the share of a limited partner, but the assignee of a general partner's share is bound to indemnify the vendor against the partnership debts: *Dodson v. Downey*, [1901] 2 Ch. 620.

(b) In the case of a limited partnership, notice of the arrangement carried

7. EVERY ASSURCE or instrumt required for givg effect to this agrmt shl be prepared by & at the expse of the sd D., & the costs of the perusal & execution throf by or on behalf of the other party or pties thereto shl be borne by him or them resply.

IN WITNESS, &c.

XIII.

DEED of DISSOLUTION of PARTNERSHIP *between Two PARTNERS on the RETIREMENT of one, where the BUSINESS is to be CONTINUED by the other (c).*

PARTIES, A., 1; B., 2. WHAS the sd A. & B. have for some yrs past carried on the business of — at —, under the provons of articles of ptnp, dated, &c., whereby it was provd, &c., *state any of the provons wch are material (a)*; AND WHAS the sd ptnrs are beneficially entitled, as pt of their ptnp ppty, to a lease of certain — & ppty at —, wch lease is dated, &c., & made, &c., or, “of the sevl leasehd ppties specified in the schdle hto,” & of certain fixed & movable engines, machinery, plant, stk-in-trade, & other effects, *or as the case may be*; AND

Recitals.
Articles of partnership.
Particulars of partnership assets.

Agreement for dissolution.

out by this agreement must have been previously advertised in the Gazette: Limited Partnership Act, 1907, s. 10.

(c) Where articles of partnership provide that on the retirement of a partner the assets of the firm are to belong to the continuing partner, and that the retiring partner is to be paid off and indemnified against the liabilities of the firm by the continuing partner, all that is necessary is an acknowledgment by the retiring partner that he has been paid, see *post*, Prec. XVII., p. 421, and a conveyance of any legal estate vested in him in trust for the partnership. As to the right of an outgoing partner or the estate of a deceased partner to an account of profits made in the interim, between the retirement or death and the making up of the account, see the P. Act, 1890, ss. 29, 42. As to the liability of a retired partner or the estate of a deceased partner to debts subsequently contracted by the firm, and as to the effect of the old firm name, or that of the retired partner, continuing to be used, see the P. Act, 1890, ss. 14, 36, 38; *Re Fraser*, [1892] 2 Q. B. 633; and generally as to the effect of dissolution, see ss. 17, and 32 to 44, and *post*, p. 415, note (a).

Conveyance rarely required.

(a) If there are no articles, say, “& are intted thrin in eql shares, but such ptnp is not regulated by any articles or agrmt in writg.” Where real or leasehold property is conveyed by the deed, any reference to the articles should, if possible, be avoided, in order not to bring them upon the title.

WHAS it has been agrd betn the sd A. & B. that the sd ptnp shl stand dissolved as from the — day of —, & a notice of such dissolution has been signed by the sd pties to be published in the London Gazette (b), & it has been agrd that, as from that day, the sd business shl belong to & be carried on by the sd B. solely, & that the share & intt of the sd A. in the assets & goodwill of the sd ptnp shl be assned & made over to the sd B. on his takg upon himself the whole of the debts & liabilities of the sd ptnp wch were outstandg on the sd — day of —, & paying to the sd A. the sum of £— as the price for his share in such of the assets of the ptnp as consist of cash in hand & at the bank, negotiable instrumts & movable chattels, & the sum of £— as the price of his share in the residue of the assets of the ptnp & in the goodwill throf (c): NOW THIS DEED made in psuance of the sd agrmt in this behalf & in conson of the premes & of the sum of £— (d) now pd by the sd B. to the

(b) As to the effect of notice in the Gazette, see P. Act, 1890, s. 36 (2), Limited Partnership Act, 1907, s. 10; and as to the power to compel notification, see s. 37 of the former Act; and before that Act, *Hendry v. Turner*, 32 Ch. D. 355.

Variation
for instal-
ments
secured
by mort-
gage.

(c) If the sum due to the outgoing partner is to be paid by instalments, and security given, add, "AND WHAS it has been further agrd that the paymt of the sd sum of £— shl be made by the sd B. to the sd A., by instalmts, with intt at — p.c. p.a., & shl be seed by the covt of the sd B. & by a mtge of freehd & leasehd ppty of the sd B. situate at, &c. [includg the ppties comprd in the respcve leases hinfementd], & such secy is intd to be forthwith exted." And say, "in conson of the premes, & of the sum of £— agrd to be pd by the sd B. to the sd A. as afsd, the paymt who is intd to be seed in mner afsd."

Stamp
duty on
the con-
veyance
of the
share
of a de-
ceased or
outgoing
partner.

(d) An assignment of the share of a deceased or outgoing partner is chargeable with *ad valorem* duty on the value of the share as a conveyance on sale, see the Stamp Act, 1891, sched., tit. CONVEYANCE: *Christie v. I. R. Commrs.*, L. R. 2 Ex. 46 (better reported 4 H. & C. 664); *Phillips v. I. R. Commrs.*, L. R. 2 Ex. 399; *Garnett v. I. R. Commrs.*, 48 W. R. 303. It is doubtful whether it is not also liable to duty on the deceased or outgoing partner's share of the partnership debts which would have to be borne by the continuing partners, and against which an indemnity is given, under the Act, s. 57; see *Ulverstone, &c., Rly. Co. v. I. R. Commrs.*, 2 H. & C. 855; and it is believed that it has been sometimes adjudicated to be so liable; though it may be contended that the interest of a partner in a firm is an indivisible thing, not admitting of being thus split up; and moreover considerable practical difficulty might arise in ascertaining the amount of the debts for the purpose. Where there is no legal estate to be conveyed, and no

sd A. the receipt whrof the sd A. hby acknowes WITNESSETH
as follows :—

Wit-
nesseth.

1. THEY THE sd A. & B. do hby declare that the sd ptnp betn them shl be considered as determined & stand dissolved as from the sd — day of —, [& that the hrinbfe mentd articles of ptnp, & all clauses, provons, & things thrin contd shl as from the sd — day of — cease & be void].

2. THE SD A. as **benefi owner** (a) hby assns & transfers unto the sd B., ALL the pt or share & benefi intt whatsr of him the sd A. of & in all & singr the leasehold (b) ppties & premes hrinbfe

Assign-
ment of
share in
partner-
ship.

preliminary contract on which the duty has been already paid under the Acts s. 59 (see *ante*, p. 409, note (g)), it might be saved by dispensing with an assignment altogether and taking merely a receipt for the money according to the form in Precedent XVII., *post*, p. 421 (see Lindley, 8th ed., 520), which would be sufficient in ordinary cases to extinguish all equitable claims. Where the legal estate in real or leasehold property is in a retiring or the representatives of a deceased partner, a conveyance of such legal estate will be necessary and a conveyance may sometimes be desirable of a merely equitable interest. It has been suggested that the consideration could be apportioned under the Act, s. 58 (1), so as to leave only a nominal sum attributable to the property conveyed and escape duty on the remainder as to which a conveyance is dispensed with, but that section does not apply unless the whole of the property for which the consideration passes is actually conveyed (see Vol. I., sub-tit. Conveyances on Sale, note); but the consideration money is apportionable in such a case, provided the apportionment is fairly made according to the actual value of the properties; and sometimes where there is no contract on which duty has been paid, the conveyance might, to save duty, be confined to any legal estate in land. Sometimes the remainder of the transaction is evidenced by recitals, framed so as not to operate in law as a transfer or contract, see Vol. I., sub-tit. Conveyances on Sale, note, or by an acknowledgment in the form in Precedent XVII., p. 421, but it appears safer not to say anything about book debts or goodwill from which a sale can be collected.

(a) This implies the full covenants for title as on a sale, which seems proper; but sometimes only a covenant against incumbrances and for further assurance is given, which may be added to the covenants on p. 414, and may be in the form following:—"THAT he the sd A. has not done any act whereby the premes hby assned or any pt throf are, is, or may be charged or incumbered in any mner whatsr; AND THAT he the sd A. will at all times, at the reqt & cost of the sd B., his exs, ads, or assns, execute & do all such assurances & acts for further or more effectually vestg the premes hby assned & every pt throf in the sd B., is exs, ads, & assns, & enablg him & them to receive, recover & obtain the full benefit of the same as shl be reasbly required."

(b) If the legal estate in any real or leasehold property is to be assured

Covenant
by out-
going
partner
against
incum-
brances.
And for
further
assur-
ance.

Haben-
dum to
continu-
ing
partner.
Power of
attorney
(d).

mentd or referred to " the sevl leasehd ppties & premes specified in the schdle hto," AND of & in All & singr the assets & good-will (c) of the sd ptnp, other than cash in hand & at the bank, negotiable instrumts & movable chattels, To HOLD the same UNto the sd B., absolutely.

3 FOR THE more effectually enabl the sd B., his exs, ads, & assns, to receive & recover & obtain the benefit of the premes hby assned, the sd A. hby irrevocably appts the sd B., his exs, ads, & assns, the atty or attys or him the sd A., his exs or ads, in the joint names of the sd A. & B. or in the name or names of the sd A., his exs or ads or orwise as the case may require, but for the exclusive benefit & at the sole cost & risk of the sd B., his exs, ads, or assns, to demand, call in, & receive from all psons liable to pay, deliver, or acct for the same, or any pt throf, All & singr the book & other debts, credits, moys & effects of the sd ptnp, & to give effectual rects & discharges for the same resply, & to endorse & sign bills & other negotiable instrumts, & to use & adopt all such remedies, proceedings, or means for gettg in & recoverg the sd debts, credits, moys, & effects resply & enforeg & obtaing the benefit of any of the contracts of the sd ptnp as may be deemed expedient, & for all or any of the pposes afsd from time to time to appt a substitute (e) or substitutes & such substiton at pleasure to revoke, & genlly to do whatsr may be requisite for givg to the sd B., his exs, ads, or assns, the full benefit of the assnmt hby made.

4. THE SD A. hby covts with the sd B. :

Covenant
by retir-
ing part-
ner that
he has
not con-
tracted
debts.

(i) That he the sd A. has not at any time htofore (except as appears by the books of the sd ptnp) contracted any debt or obligon wch can or may charge or affect the sd B., his exs, ads, or assns, or the assets or effects of the sd ptnp or any pt throf, or reced or discharged any of the sd debts, credits, mo6s, or effects, except as afsd ;

to the continuing partners this should be done by a separate deed ; see Precedent VIII., p. 401.

(c) As to the rights of a purchaser of goodwill, see *ante*, p. 359, note (a), and Vol. I., p. 419, note.

Power of
attorney.

(d) The insertion of this power is proper notwithstanding the provisions of the L. P. Act, 1925, s. 136, making choses in action assignable, as it may be difficult to give notice of the assignment to all the debtors of the partnership : see *ante*, p. 320, note. The power being for value and expressed to be irrevocable, cannot be revoked : see L. P. Act, 1925, s. 126 ; Vol. I., p. 203, note.

(e) See L. P. Act, 1925, s. 128 (1).

(ii) That he the sd A., his exs or ads, will at all times ratify & confirm whatsr the sd B., his exs, ads, or assns, or any substitute or substitutes actg under him or them, shl do or purport to do by virtue of this deed ; To ratify.

(iii) That he the sd A. will not compound, rele or become non-suited in any action or proceeding wch may be instituted or taken by the sd B., his exs, ads, or assns, by virtue of the power of atty hrinbfe contd, nor do any other act by means whrof the recovery of the premes hby assned or any pt throf may be impeached or delayed, nor interfere in or about the premes further or orwise than the sd B., his exs, ads, or assns, shl direct or require. Not to release debts, &c.

5. THE SD B. hby covts with the sd A. :

(i) That he the sd B. will in due course pay all the debts & discharge all the liabilities of the sd ptnp, & will at all times hrafter duly pay, pform & observe the rents & covts to be pd, pformed & observed in respt of the sd leasehd premes ; Cove-nants by continuing partner.

(ii) That he the sd B. will at all times hrafter effectually keep indemnified the sd A., his exs & ads, & his & their estes & effects against all such debts & liabilities, & all actions, proceedings, costs, & expses in respt throf, & all costs & expses by reason of any action or proceeding wch may be instituted or taken by the sd B., his exs, ads, or assns by virtue of the power or authority hrinbfe contd or of anythg relatg thereto. To pay debts. For indemnity (a).

6. EACH OF them the sd A. & B. hby releases & for ever discharges the other of them, his exs, or ads, from all actions, proceedings, claims, & demands whatsr wch such respective releasing party, or his exs, or ads, now has or hrafter but for this deed might have had against the other of them, his exs, or ads, on acct of the sd ptnp or anythg relatg thereto, but so nevertheless that this psnt release shl not prejudice or affect any of the covts, agrmts, or provons hrin contd or implied, or Mutual release.

(a) As to the effect of the dissolution in converting the retired partner into a surety for the debts, see *Rouse v. Bradford Banking Co.*, [1894] A. C. 586. Where the dissolution is kept secret the payment of interest by the surviving partners may prevent the debts of the firm becoming statute barred in favour of the retiring partner : *Re Tucker*, [1894] 3 Ch. 429. The covenant of indemnity does not seem to make the deed chargeable with *ad valorem* duty as a security, except for a nominal sum, as the stamp can be added to if occasion arises, without payment of a penalty, under the Stamp Act, 1891, s. 88 (2); see *ante*, p. 412, note (d); and Vol. I., sub-tit. Indemnity. Effect of dissolution.

the rights or remedies of the sd respective pties, their exs; ads, or assns hrunder. IN WITNESS, &c.

[*Schdle of leasehds.*]

XIV.

DEED of DISSOLUTION on DEATH of ONE of THREE PARTNERS, where PART of the ASSETS consists of REAL and LEASEHOLD PROPERTY, which is transferred by a SEPARATE DEED (b), and where the SHARE of the CAPITAL of the DECEASED PARTNER is to remain as a LOAN to the FIRM, payable by INSTALMENTS, under a PROVISION in the ARTICLES, to be secured by DEED of COVENANT or MORTGAGE.

Recitals.	<i>PARTIES, A. & B., exs of deced ptner, 1; C. & D., continug ptners, 2. Recite articles of ptnp betn C. & D., & X., settg out the provons for death of a ptner; death of X., & will apptg A. & B.</i>
Particulars of partnership property.	<i>exs, & probate, Vol. I., p. 457: AND WHAS the sd C., D. & X. were at the death of the sd X. entitled as pt of their ptnp ppty to the ppties specified in the first schdle hto wch are of freehd tenure, & to the ppties specified in the second schdle hto wch are held under the respective leases in such schdle mentd, & they were also entitled, &c., State short parlars of other</i>
Accounts taken.	<i>ppty; AND WHAS the accts & valuons directed by the sd articles of ptnp to be taken & made on the death of any ptner have been taken & made, & it thereby appears that the sum of £—— is the amt now due to the sd A. & B. as exs of the sd X. in respt of intt & profits, & that the sum of £—— is the amt of the share of the sd X. in the capl of the sd ptnp, after discharging the liabilities throf wch were outstandg at the death of the sd X.: AND WHAS it has been agrd [psuant to the provons contd in the sd articles] & as pt of the arrangemts conseqt on the death of the sd X. that the sd sum of £—— shl be pd by the sd C. & D. to the sd A. & B. upon the execution of</i>
Agreement for payment.	

(b) See *ante*, pp. 409, 414, notes, and Precedents VIII., p. 401, and IX., p. 402. As to *ad valorem* duty on the conveyance of the deceased partner's share, see *ante*, p. 412, note: and see Precedent XVII., p. 421.

this deed, & that the paymt of the sd sum of £—— *i.e.*, the share of *capl* of X., by four eql instalmts, at the expiron of six, twelve, eighteen & twenty-four calr months from the death of the sd X. togr with intt on the same sum, or the pt throf for the time being unpd, at the rate of £—— p.c. p.a. from his death, shl be seed to the sd A. & B. by the joint & sevl covt of the sd C. & D., or, “by a mtge of the sd freehd & leasehd ppties comprised in the first & second schdles hto, & the other assets & goodwill of the sd ptnp (other than psonal chattels within the meang of the Bills of Sale Acts, 1878 & 1882)” (a), weh sd covt, or “mtge,” is intd to bear even date with & to be executed immedly after this deed, & that the sd A. & B. shd convey to the sd C. & D. the share of the sd X. in the freehd & leasehd premes & the other assets & goodwill of the sd ptnp: AND WHAS for the pposes of stamp duty (b) it has been agrd that the sum of £——, pt of the sd sum of £——, shl be the price of the share of the sd X. in the sd freehd & leasehd ppties, & that the sum of ——, further pt of the sd sum of £——, shl be the price of the share of the sd X. in the cash in hand & at the bank, negotiable instrumts & movable chattels belongg to the sd ptnp, & that the sum of £——, residue of the sd sum of £——, shl be the price of the share of the sd X. in the residue of the assets & goodwill of the sd ptnp: AND WHAS, in psuance of the hrinbfe recited agrmt, by a convce bearg even date with but executed bfe & made betn the same pties as this deed, *short recital of convce of freehds & leasehds by A. & B. to C. & D. in conson of the sum apportioned as the value throf*; NOW THIS DEED made in psuance, &c., WITNESSETH as follows:—

Appor-
tionment
for duty.

Convey-
ance of
realty
and lease-
holds.

Wit-
nesseth.

1. *Assnmt by A. & B. to C. & D., in conson of the apportioned value throf & of the premes, of the share of X. in the goodwill & assets* “other than the sd freehd & leasehd premes, & other than the sd cash in hand & at the bank, negotiable instrumts & movable chattels,” *as in last Prec., mutatis mutandis*, To HOLD the same UNTO the sd C. & D. absolutely, accordg to the respective shares, rights, & intts of the sd C. & D. of & in the ppty of their psnt ptnp.

Haben-
dum to
partners.

(a) The charge would be void as to the chattels excepted: see *ante*, p. 159.

(b) See *ante*, p. 412, note.

[2. If necy add a power of atty & covt to ratify as in last Prec., with alterons required for sevl pties.]

3. Joint & sevl covts by C. & D. to pay debts, & indemnify A. & B., & este of X., as in last Prec., *mutatis mutandis*.

Mutual
release.

4. THE SD A. & B. do & each of them doth hby release & for ever discharge the sd C. & D., & each of them, their & each of their exs, ads, & assns, & the sd C. & D. do & each or them doth hby release & for ever discharge the sd A. & B., & their respective exs & ads, & the este & effects of the sd X., &c., as in last Prec., with the necy verbal alterons, the release not to affect "the rights of the sd respective pties under any covts or provons contd in the sd respective convces of even date herewith or this deed." IN WITNESS, &c.

Schdles givg short parlars of freehds & leasehds.

XV.

DEED of RELEASE, &c., between EXECUTORS of DECEASED PARTNER and SURVIVING PARTNER.

Parties. *PARTIES, X. & Y., exs of A., 1; B., 2. Recite deed of ptnp*
 Recitals. *betn A. & B., givg option to a surviving ptner to pchase the share of the deced ptner on givg a certain notice according to the value as ascertained on takg the accts. Death of A. & will, &c., as in last Prec. AND WHAS the sd B. duly notified to the sd exs his intention to continue the sd business & to pchase the share & intt of the sd A. in the sd business & premes p uant to the sd deed of ptnp, & the accts & valuons directed by the sd deed of ptnp to be taken & made in that event have been duly taken & made & the total amt or value of the share & intt of the sd A. includg accrued intt & profits to the — day of — last was ascertained to be the sum of £—: AND WHAS the sum of £— pt of the last-mentd sum has been pd by the sd B. to the sd exs & the paymt of the sum of £— (the balance throf) by instalmts with intt is intd to be seed by a deed of covt & mtge of certain freehd & leasehd ppties of the sd late firm wch is intd to bear even date with & to be executed after this deed & to be made betn pties: AND WHAS it has been agrd that such acknowmts & covts & mutual releases as are resply hrinar*

Purchase of share.

Payment to be secured by mortgage.

contd shl resply be entered into & executed: NOW THIS DEED made in psuance, &c., & in conson of the premes WITNESSETH as follows:—

Wit-
nesseth.

1. THE SD X. & Y. do hby acknowe & declare that the deed of covt & mtge wch is intd to bear even date with & to be executed after this deed as afsd shl be accepted by them as in full satisfon of all claims & demands against the sd B. or orwise in respt of the share or intt of the sd A. or of them the sd X. & Y. as his exs or trees in the sd business of the sd late firm or the assets or ppties throf.

Acknow-
ledg-
ment.

2. EACH of them the sd X. & Y. as to the acts of himself & his own exs & ads only hby covts with the sd B., his exs, ads & assns, that they the sd covtg pties resply & their respective exs & ads will at any time after the sd deed of covt & mtge shl have been made & executed, at the request & cost of the sd B., his exs, ads or assns execute & do such further or other convces assnmts, assurances & other instruments or acts for vestg the full beneficial intt in the freehd & leasehd ppties or the other assets of the sd late ptnp in the sd B., his exs, ads, or assns as may be reasbly required, but witht prejudice to the sd deed of covt & mtge.

Cove-
nant for
further
assur-
ance.

3. *Covt by B. to indemnify exs, &c., against debts & rents & covts of leases & mutual releases, as in last Prec., mutatis mutandis.*
IN WITNESS, &c.

XVI.

ASSIGNMENT *by a RETIRING PARTNER to his Two CO-PARTNERS of his SHARE in FREEHOLD and LEASEHOLD PROPERTIES and FIXED MACHINERY, &c., which are in MORTGAGE (to accompany a DEED of DISOLUTION) (a).*

PARTIES, A., retirg ptner, 1; B. & C., continuing ptners, 2.
WHAS the sd A., B., & C. carried on the business of — in co-ptnp up to the — day of — now last past, & are entitled as pt of their ptnp ppty to benefl intts in the messes, bldgs, lands,

Recitals.
Title to
property
subject to
mort-
gages.

(a) See *ante*, p. 411, note (a), and Precedent XIV., p. 416; and as to stamp duty, see p. 412, note.

	& pptyes specified in the first schdle hto, wch are of freehd tenure, & to the messes, bldgs, lands, & pptyes specified in the second schdle hto, wch are of leasehd tenure & are held under a lease dated, &c., & made, &c., for the residue of a term of — yrs from the — day of — at the yrly rent of £—, & to the fixed machinery & other erections & fixtures upon the sd respective freehd & leasehd premes (subjt to the mtges & incumbees mentd in the sd schdles as affectg the sd respective freehd & leasehd premes) in the shares & proportions followg, that is to say, the sd A. to — eql — pts throf, & the sd B. & C. to the remaing — eql — pts throf: AND WHAS the sd A. has retired from the sd firm as from the sd — day of — now last past, & the sd B. & C. continue to carry on the sd business of — in co-ptnp togr: AND WHAS the sd B. & C. have come to a settlmt with the sd A. in respt of his share & intt in the sd ptnp & the assets & effects throf, & it has been agrd that they shd pay to the sd A. the sum of £— in full satisfson of such share & intt: AND WHAS for the pposes of stamp duty the sum of £—, pt of the sd sum of £—, has been apportioned as the estimated value of the share of the sd A. in the sd freehd & leasehd premes & the fixed machinery & other erections & fixtures thron, valued as free from incumbees: AND WHAS it has been agrd that the share & intt of the sd A. in the sd last-mentd premes shd be assnd to the sd B. & C. in mner hrinar mentd: NOW THIS DEED made in psuance of such agrmt, & in conson of the sum of £— to the sd A. pd by the sd B. & C. out of moys belongg to their sd new ptnp, receipt, WITNESSETH as follows:
Retire- ment.	
Account settled.	
Appor- tionment for duty.	
Agree- ment for convey- ance.	
Wit- nesseth.	
Grant and assign- ment of shares.	1. THE SD A. as benefi owner hby assns, & releases unto the sd B. & C., ALL THOSE — eql undivided — pts or shares & all other (if any) the pts, shares, or intts of the sd A. of & in the freehd & leasehd messes, bldgs, lands, pptyes, & premes specified in the sd first & second schdles hto, & of & in all the fixed machinery & other erections & fixtures in or upon the same respective premes: To HOLD the same unto the sd B. & C. absolutely as joint tenants.
Haben- dum to con- tinuing partners (a).	2. <i>Joint & sevl covt by B. & C. to indemnify A. against rent &</i>

(a) If the property were vested in A., B. and C. as joint tenants in trust for them as partnership estate, A. will by a separate deed convey and release the property to B. and C. as joint tenants in trust for sale.

covts of lease & mtge debts, see Vol. I., pp. 553 to 555. IN
WITNESS, &c.

Two Schdles.

XVII.

ACKNOWLEDGMENT *by* RETIRING PARTNER *or the*
REPRESENTATIVE *of a* DECEASED PARTNER *of* SATIS-
FACTION *of his claims against the* FIRM (b).

To B. & C., *continug ptners*, both of, &c., carryg on business as — in co-ptnp togr at — under the firm name of —.

I, A., of, &c. [sole exor & tree under the will of X., late of — deced] do hby acknowe & declare that I have this day receed from the sd B. & C., the sum of £— being the full amt of all moys due or owing to me, *or*, “to the este of the sd X., or to me as exor or tree under his will” in respt of my share or intt [the share or intt of the sd X. deced] as a ptner in the sd business of — as carried on by me [him] up to the — day of —, *or*, “up to his death” at — afsd in ptnp with the sd B. & C. under a ptnp deed dated, &c. As WITNESS my hand this — day of —.

XVIII

COVENANT *of* INDEMNITY *against* PARTNERSHIP DEBTS *on*
DISSOLUTION (c).

PARTIES, A. & B., *continug ptners*, 1; C., *retirg ptner*, 2. Recitals.
WHAS the sd A., B., & C. have carried on the business of, &c., Partner-
under the firm of —, at — afsd, from the — day of — : ship.
AND WHAS by a deed of dissolutn bearg even date with but Dissolu-
tion.

(b) See *ante*, p. 412, note. This instrument, if under hand, requires only a twopenny stamp.

(c) See Lindley, 8th ed., 521. As to the stamp, see *ante*, p. 415, note.

Agree-
ment.

executed before this deed, & made, &c., it has been agrd that the sd ptnp shl be considered as determined & dissolved from the — day of —, & by the same deed (among other things) the sd C. has assned & released unto the sd A. & B., their exs & assns, All the este & intt of him the sd C. in the sd ptnp business, & the moys, debts, ppty, & effects belongg or due to the sd A., B., & C., as ptnrs, or in respt of the sd ptnp : AND WHAS it was pt of the arrangemt for the dissolution of the sd ptnp that the sd A. & B. shd execute & give to the sd C. such indemnity as is hrinar contd : NOW THIS DEED WITNESSETH that the sd A. & B. hby jtly & sevly covt with the sd C. as follows, that is to say :

THE SD A. & B. or one of them, their or one of their exs, or ads, shl pay all & every the bills & notes of the sd ptnp & all & every other the debt & debts & moys due or growg due from the sd A., B., & C., or any or either of them in respt of the sd ptnp, & discharge all the liabilities & pform all the engagements of the sd ptnp to wch the sd A., B., & C., or their respective exs or ads, or any of them are, is, or shl be liable, & shl keep indemnified the sd C., his exs, ads, este & effects against all actions, proceedings, losses, damages, costs, & expses for or by reason of the non-paymt, non-discharge, or non-pformce of any of the sd bills, notes, debts, moys, liabilities, or engagements, or of any act or thing in anywise relatg thereto.

Signed, sealed, &c.

XIX.

DEED of COVENANT by CONTINUING PARTNERS to secure the CAPITAL of a DECEASED PARTNER, which, pursuant to the ARTICLES of PARTNERSHIP, is to remain as a LOAN during the PARTNERSHIP TERM, the INTEREST being dependent on the rate of PROFITS (a).

Recitals.
Articles
of part-
nership.
Partner-
ship Act,
1890.

PARTIES, A., B., & C., continug ptnrs, 1 ; D. & E., exs of deced ptnr, 2. WHAS the sd A., B., & C. are carryg on the

(a) See Vol. I., p. 28. The payment of the deceased partner's share is often made by instalments, secured by a mortgage of the business premises. In

business of — in ptnp togr in continuon of the business lately carried on by the sd A., B., C., & K., *deced ptnr*, under the style or firm of A. & Co, subjt to the stipulons contd in a deed of ptnp, &c., whereby it was (among other things) provd, *continue recital of articles of ptnp statg the clauses followg; duration of ptnp, death of one ptnr not to dissolve firm, annual genl acct, provision for death of ptnr where his capl is to remain as a loan durg the term: Death of K., & will apptg D. & E. exs & probate, Vol. I., p. 457* : AND WHAS at the death of the sd K. his share in the capl of the sd ptnp, as appearg by the genl acct taken by the ptnrs on the — day of — precedg his death, amted to £—— : AND WHAS all moys wch were due or owing to the sd D. & E., as exs of the sd K. in respt of profits or intt in his capl up to his death have been pd & satisfied, as the sd D. & E. do hby acknowe : AND WHAS in psuance of the sd deed of, &c., the sd D. & E. have agrd with the sd A., B., & C., to leave the sd sum of £——, *share of capl*, as a loan to the sd firm of A. & Co. durg the residue of the sd term of — yrs upon havg the repaymt of the same with such intt as is hrinar mentd seed in mner hrinar appearg : NOW THIS DEED made in psuance of the sd agrmt, & in conson of the sd sum of £—— being left by the sd D. & E. as a loan to the sd firm of A. & Co. WITNESSETH as follows :—

Share of
deceased
partner.

Profits of
deceased
partner
paid out.
Agree-
ment for
loan.

Wit-
nesseth.
Covenant
to pay
principal.

And
interest.

1. *Joint & sevl covt by A., B., & C., with, D. & E., that the sd firm of A. & Co. will pay to the sd D. & E., or other the legal psonal repves or repve for the time being of the sd K., their or his assns, the sum of £—— on the — day of —, i.e., end of ptnp term, AND WILL in the meantime pay to them or him intt on the sd sum of £—— at the rate of — p.c. p.a. by eql qtrly paymts on the usual qtr-days, & a further sum by way of addonal intt for each yr durg wch the sd firm*

that case such of the recitals in the text as may be appropriate will be inserted, with the addition of recitals of the title of the firm to the freehold or leasehold property to be comprised in the security, and the deed, or deeds, by which the share of the deceased partner therein has been assigned to the continuing partners. The operative part of the deed will be in the usual form of a mortgage to secure the payment of money by instalments: see "MORTGAGES," *ante*, p. 90. It was decided under Bovill's Act (and the same would presumably hold under the P. Act, 1890), that the rights of a mortgagee, where the interest varies with the profits, under his mortgage, were not affected by the Act: *Ex p. Sheil*, 4 Ch. D. 789; *Badeley v. Consolidated Bank*, 38 Ch. D. 238.

of A. & Co. shl make any profits, eql to one eql — pt of such profits as appearg by the annual genl acct, such further sum to be pd immedly after the signature of such acct, but so that the sum (if any) payable by way of addonal intt as last afsd upon the takg of the next annual acct shl be an apportioned pt calculated from the death of the sd A. of the sum representg such share of profits as afsd for the whole of the now current yr.

Power to
join in
taking
accounts.

Variation
where
executors
are not to
join in
taking
accounts.

Proviso
for calling
in loan in
certain
events.

2. THE SD D. & E., or other the legal psonal repves or repve of the sd K., their or his assns, may join in takg every annual genl acct of the sd firm durg the sd term, & may at all reasble times have access to & examine & take copies of or extracts from the books & acets of the sd firm, [or *in lieu of last clause*, PROVID ALWAYS that the sd D. & E., or other, &c., *as above*, shl not be entitled to join in takg the annual genl acct of the sd firm, or to inspect the books or acets of the sd firm, but the acets of the sd firm shl be made up by or under the direction of the ptners for the time being or one of them every yr on the — day of — or as soon thrafter as may be, & a pper acct & balance-sheet shl be forthwith made out & furnished to the sd D. & E., or other, &c., *as above*, & shl if required by them or him be verified by the statutory declaron of one of the sd ptners or of some pson who shl have been employed in makg up the acets, & such acct & balance-sheet when so verified shl be conclusive & bindg upon the sd D. & E. or other, &c.].

3. PROVID ALWAYS & it is hby agrd that if at any time durg the residue of the sd term of — yrs the business of the sd ptnp shl be carried on orwise than strictly in accordce with the provons & stipulons contd in the sd deed of, &c., *the articles of ptnp (a)*, or if the sd firm of A. & Co. shl at any time fail to pform & observe the covts & stipulons hrin contd & on their pt to be pformed & observed [or if the net profits made in any one yr by the firm of A. & Co. as appearg by the annual genl acct, after paymt of intt on capl & the fixed intt hrinbfe covted to be pd on the sd sum of £—, shl not amt to the sum of £—], then & in either of such cases the sd D. & E., or other, &c., their or his assns may, by

(a) Sometimes the surviving partners are made to covenant that the business of the partnership shall be carried on during the residue of the term in accordance with the provisions of the articles; but the clause in the text is preferable.

notice in writg addressed to the firm of A. & Co. & left at the countg-house of the sd ptnp, elect that the provons hrinbfe contd as to paymt of the sd sum of £—— & intt shl cease to operate, & thrupon the sd sum of £—— or the unpd pt throf, togr with the intt (if any) at the rate of £—— p.c. p.a. weh shl have acerued but shl not have been pd thron, & unless such notice shl be given on the —— day of ——, *the day for takg the annual genl acct*, a further sum instead of such share of profits as afsd by way of addonal intt at the rate of £—— p.c. p.a., to be calculated from the then last —— day of —— up to the day when such notice shl be given, shl as one aggregate debt, with intt thron at the rate of £—— p.c. p.a. as from the date of such notice being given until paymt, be pd on demand by the sd firm of A. & Co. to the sd D. & E., or other, &c., *as above*.

4. PROVD ALWAYS, & it is hby agrd & declared that nothg hrin contd shl constitute the sd D. & E. ptnrs in the sd firm of A. & Co.

Exe-
cutors
not to be
partners.

5. PROVD ALSO that this deed & the secy hby created shl not be affected by any change in the psons constitutg the sd firm of A. & Co. weh may be caused by the death [or retiremt] of any ptnr [or the admission of any new ptnr] or orwise howsr.

Security
not to be
affected
by
change in
firm.

[6. *Add, if desired, a covt by A., B., & C. to indemnify the estate of K. against the liabilities of the firm, p. 415.*] IN WITNESS, &c.

PATENTS (*a*).

CLAUSES IN ASSIGNMENTS AND LICENCES.

Recital of appli-
cation for
patent
since
1883.

1. WHAS THE inventor, on the — day of — made an appicon for a patent for “Improvements in the manufacture of —,” or *other short description*, accompanied by a provisional specificon [but has not yet left a complete specificon at the Patent Office] or, “& on the — day of — left a complete specificon at the Patent Office, but the same has not yet been accepted,” or, “accompanied by a complete specificon, but the same has not yet been accepted.”

The same,
and
accept-
ance of
complete
specifica-
tion.

2. WHAS, &c., *as in last form, as the case may be*, & the sd complete specificon has been accepted, but letters patent have not yet been grted to the inventor in respt throf.

Recital of
grant of
letters
patent (*b*).

3. WHAS BY letters patent under the seal of the Patent Office sealed as of the — day of — the especial licence, full power, sole privilege & authority of makg, using, exercising, & vendg by himself, his agents or licensees, an invention for “Improvements in —” in the United Kingdom of Great Britain & Ireland, & the Isle of Man, were grted to the patentee for the term of sixteen (*c*) yrs from the date of such letters

Law of
patents.

(*a*) As to the present law of patents, see the Patents and Designs Acts, 1907 and 1919, and the Patents Rules, 1920 (Stat. Rules and Orders, 1920, No. 338). See further as to the law, Johnson, *The Patentee's Manual*; Lawson on the Patent Acts; Terrell on Patents, 6th ed. (1921); Seton, 7th ed., 2312 *et seq.*

(*b*) This form follows the form of letters patent contained in the third schedule to the Rules. A grant of letters patent before 1908 to “A. & B., their exs, ads, & assns,” created a joint tenancy: *National Society, &c. v. Gibbs*, [1899] 2 Ch. 289 (reversed on another point, [1900] 2 Ch. 280); and since 1907 creates a legal interest in joint tenancy, although the right to use the invention passes to each patentee, and on his death to his personal representatives as part of his estate, and none of the patentees can grant licences without the consent of the others: Patents, &c., Act, 1907, s. 37.

(*c*) By s. 6 of the Patents, &c., Act, 1919, the term limiting the duration

patent, subj't to provons for avoidg such letters patent in certain events thrin mentd, includg the non-paymt by the patentee of all fees required by law in respt throf.

4. WHAS THE patentee is entitled by assnmt [so far as regards the county of — (d)] dated, &c., & duly registered (e), to letters patent “under the seal of the Patent Office,” dated, &c., & origly grted to X. for “Improvemts in, &c.”

Title to patent by assign-
ment.

5. WHAS THE patentee is the inventor & patentee of an invention for “Improvemts in, &c.,” the letters patent for wch bear date, &c.

Short recital of title to patent.

6. WHAS THE patentee is entitled to the sole & exclusive licence, &c., as in recital of grant of letters patent, in the [Republic] of [France], wch was grted to him by a [brevet d'invention], dated, &c., & wch will expire on, &c. (f).

Recital of foreign patent.

7. NOW THIS DEED WITNESSETH that in psuance of the recited agrmt, & in conson of the [sum of £—— now pd by the licensee to the patentee (the rect whrof is hby acknowledged) & of the] royalties & paymts hrinar reserved & made payable, & of the covts & agrmts on the pt of the licensee hrinar contd, the patentee (g) hby grts unto the licensee full [& exclusive] licence to use & exercise the sd invention [together with such improvemts thrin as are hrinar mentd] durg the term of — yrs from the date of this licence, or, “the unexpired residue of the term of the sd letters patent, or any renewal or extension throf,” & to sell & dispose of all — manufactured hrunder when & as the licensee shl think fit for his absolute use & benefit, [subj't to the paymt of

Grant of licence.

of patents is increased to 16 years from 14 years for both pending and new patents, with a corresponding benefit to licensees.

(d) See Patents, &c., Act, 1907, s. 14 (1).

(e) An equitable assignment of a patent may be registered: *Re Casey*, [1892] 1 Ch. 104; and by s. 71 (2) of the Patents &c., Act, 1907, as amended by s. 16 of the Act of 1919, any person interested in a patent as mortgagee, licensee or otherwise may be entered on the register.

(f) As to foreign and colonial patents, see Johnson, the Patentee's Manual, Appendix.

(g) Covenants for title cannot, it is conceived, be implied by making the patentee grant “as benefl owner” under the L. P. Act, 1925, s. 76, since a licence, even though exclusive, seems not to be a “conveyance” within s. 205 (1) (ii) of the Act: see *Guyot v. Thomson*, [1894] 3 Ch., at p. 398. It is better, if so intended, to insert express covenants, see *post*, p. 434, i. 33.

the royalties & moys hrinar reserved & made payable, & to the pformee & observce of the covts & agrmts on the pt of the licensee & condons hrinar contd].

Thesame.
Various
restric-
tions.

8. NOW THIS DEED WITNESSETH, &c., as in f. 7, the patentee (a) hby grts unto the licensee full [& exclusive] licence to use & exercise the sd invention [together with such improvemts thrin as are hrinar mentd] [to the extent of — & with reference to — only] [for the ppose of manufacturg — only] [at any place or places within a radius of — miles from —, but not elsewhere] [in England only] durg the term of — yrs from the — day of —, or, “the unexpired residue, &c.,” as in last form, & to sell & dispose of all — manufactured hrunder [within the limits afsd, or, in England only (b)] at any time durg the sd term [or within six calr months from the expiron throf] or, “at any time durg the sd term or any extension or renewal throf” [subjt to the paymt of the royalties, &c., as in f. 7].

Assign-
ment of
patent.

9. NOW THIS DEED WITNESSETH, &c., as in f. 7, the patentee, as benefi owner (c), hby assns & transfers unto the assnee ALL THAT the sd invention of improvemts in — & the sd letters patent for the same, & the full & exclusive benefit throf [& of any & every improvemt, extension or renewal throf, & the right to apply for & obtain an extension or renewal throf,] & all rights, powers, & benefits to the sd invention, letters patent, & premes belongg [add, if required, restrictions as in last form,] To HOLD UNTO the assnee for the residue of the sd term of sixteen yrs grted by the sd letters patent [& any further term to be grted by any extension or renewal of the same] [within the limits afsd] [subjt to the paymt of the royalties, &c., as in f. 7].

Covenant
to pay
share of
net pro-
fits in
licence.
Varia-
tions for
assign-
ment.

10. THE LICENSEE [ASSNEE] shl pay to the patentee a, moiety, of all the net gains & profits wch the licensee [assnee] shl at any time or times hrafter obtain or receive from or by means of the sd invention [includg any sales or

(a) See note (g) on last page.

(b) A licence to manufacture within certain limits does not imply a right to sell outside those limits: *Société, &c., de Glaces v. Tilghman's, &c., Co.*, 25 Ch. D. 1; see also *National Phonograph Co., &c. v. Menck*, [1911] A. C. 336.

(c) This implies the usual covenants for title on a sale or mortgage, but not a covenant for the validity of the patent.

licences or other disposons of or deals with the sd letters patent] after payg & deductg all costs, charges, losses, damages & expses whatsr wch the licensee [assnee] may pay or incur in or about the keepg in force of the sd letters patent or protectg the same from infringemt [or in or about such disposons or deals as afsd] [or in or about the obtaing or procurg or endeavourg to obtain or procure or keepg in force any letters patent for such improvements as afsd] or in or about introducng the sd invention to the public, together with intt thron at the rate of £—— p.e. p.a. from the time of the paymt throf [resply] in every half-yr commeneg on the —— day of —— & the —— day of ——, to become due & be pd at the end of two calr months after the expiron of every half-yr.

11. THE ASSNEE [LICENSEE] shl pay to the patentee [yrlly durg the term hby grted [the continue of this licence] & so in proportion for any less time than a yr, the sum of £—— as a fixed or minimum annl rent, by eql qtrly paymts on the —— day of ——, &c., the first of such paymts to be made on the —— day of —— next, in respt of wch sd annl sum of £—— the assnee [licensee] may manufacture [& sell] —— [cwt. of] —— accordg to the sd invention, & shl also pay to the patentee] for every —— [cwt.] [in excess of —— [cwt.]] of —— manufactured [& sold] by the assnee [licensee] accordg to the sd invention, in every half-yr of the sd term, commeneg on the —— day of —— & the —— day of —— [whether the same shl have been sold or not] the royalty or sum of £——, to become due & be pd at the end of two calr months after the expiron of the half-yr durg wch the same [such excess] shl have been manufactured [or “sold”].

Covenant to pay royalties. Variations where there is a fixed minimum rent (d).

12. THE ASSNEE [LICENSEE] shl at all times durg the term hby grted [the continue of this licence] keep accurate & regular accts in separate books containg full entries & parlars of all —— manufactured by him hrunder [& of the sales throf], & of all parlars in relation thereto, wch may be material for the ppose of showg the amt payable to the patentee by

Covenant to keep accounts, and permit inspection.

(d) It is important to remember that an assignment of a patent, or a licence, imposes no obligation on the assignee or licensee to work the patent : *Re Railway, &c., Appliances Co.*, 38 Ch. D. 597.

way of royalty as afsd : And the sd books of acct & all other documts in the posson of the assnee [licensee] relatg to the sd invention, manufacture, [sales,] & premes, shl be kept at the place of business of the assnee [licensee], & shl at any time, if required, be produced for the inspection of the patentee or his agent, who shl be at liberty to make copies of or extracts from any of the accts or matters thrin contd.

To furnish half-yearly account and verify same.

13. THE ASSNEE [LICENSEE] shl within ten days after the expiron of every such half-yr furnish to the patentee or his agent a full acct & statemt in writg of all — manufactured [& sold] as afsd during the precedg half-yr, & every such statemt & also any of the entries in the books of acct to be kept as afsd shl, if required by the patentee or his agent, be verified by the statutory declaron of the assnee [licensee], or some pson or psons in his employmt who shl be approved of for that ppose by the patentee.

Covenant to avoid revocation, &c. (a).

14. THE ASSNEE will not do or omit any act or thing whereby the sd letters patent may become liable to revocation or whereby a compulsory licence might be ordered under sections 24 or 27 of the Patents & Designs Act, 1907, as substituted by sections 2 & 1 respectively of the Patents & Designs Act, 1919, & shl pay to the patentee as liquidated & ascertained damages & not as a penalty, the sum of £ — in respt of such revocon, & £ — in respt of the grant of any such compulsory licence as afsd.

To affix labels.

15. THE LICENSEE shl affix in a conspicuous mner upon every article [box or packet containg articles] manufactured by him under this licence a label or plate bearing the inscription, "A.'s patent, 19—," such labels or plates to be supplied by the patentee, & shl not sell any articles [box or packet

(a) By the substituted provisions of s. 27, the comptroller is given elaborate powers of revoking the patent or granting compulsory licences where he is satisfied that on the application of any person interested a case of abuse of the monopoly rights under the patent has been established, and by the substituted provisions of s. 24 the comptroller is empowered to indorse a patent with the words "licences of right" and to grant compulsory licences with a view to securing the widest possible user of the invention in the United Kingdom consistent with the patentee deriving a reasonable advantage from his patent rights. These new provisions are mainly attributable to the decisions in *Re Bremer*, [1909] 2 Ch. 217; *Re Hatschek* [1909] 2 Ch. 68; *Re Taylor*, [1912] 1 Ch. 635; See also *Re Robin Electric Lamp Co.'s Petition*, [1915] 1 Ch. 780.

containing articles] so manufactured with such a label or plate.

16. ALL MACHINES to be used by the licensee under this licence shl have a plate containing the inscription, "A.'s patent, 19—," affixed to the same on some conspicuous pt throf to be prescribed by the patentee or his agent for that ppose, such plates to be furnished by the patentee: And no such plate shl be removed from any machine to any other witht the previous consent of the patentee or his agent, & no machine shl be considered as duly licensed or authorised to be used unless such plate be affixed thereto.

The same to machines.

17. THE PATENTEE or his agent may at any time durg the continue of this licence enter upon any factory or place of business of the licensee in wch the manufacture of — shl be carried on at any reasble hour in the daytime to inspect the same & the works throf & all — manufactured or in course of manufacture in such factory or place.

Power to patentee to inspect factories.

18. THE LICENSEE shl not, either directly or indirectly & either by himself or any agent or agents, use or exercise the sd invention orwise than in accordce with these psnts.

Licensee not to use invention except as licensed.

19. THE PATENTEE shl, whenever required, give to the licensee [assnee] such assistce & informon resptg the sd invention & the mode of workg & using the same & all processes connected thwith as may be neey for enablg him to use & exercise the sd invention to the best advantage.

Patentee to give licensee or assnee assistance.

20. IF AT any time or times hrafter durg the sd term the patentee shl invent, discover, or make any improvemt or improvmts (b) in the sd invention, or in the mode of workg or using the same, or wch may be applied to the sd manufacture, or shl become the owner of any such improvemt or improvmts (whether patented or not), then & in every such case he shl communicate such improvemt or improvmts to the licensee, [assnee], & give him full & sufficient informon, instructions, & assistce respectg the mode of workg & using the same, & so far as practicable render the same available at the expse of the licensee, [assnee], for his benefit [within the limits afsd,] & do every act wch may be neey for obtaining

Patentee to communicate further improvements to licensee or assnee.

(b) As to what are improvements, see *Hopkins v. Linotype, &c., Ltd.*, 101 L. T. 898.

letters patent in respt throf & for granting unto the licensee full licence to use & exercise any such improvemt or improvmts [within the limits afsd] [or “weh may be neey or convenient for enablg the assnee to obtain letters patent for vestg the exclusive right thereto in him or such other pson or psons as he may appt,”] & such licence [letters patent] shl be subjt to the terms of these psnts in the same mner in all respts as if such improvemts had been comprised in the origl invention.

Provi-
sion as to
infringe-
ments.

21. IF THE sd letters patent shl be infringed (a) the patentee [licensee] shl forthwith after notice of such infringemt at his own cost take all neey proceedings for effectually protectg & defendg the same, & in default of his so doing the licensee [patentee] may, by notice in writg given to the patentee [licensee] or left at his usual or last known place of business or residence, determine this agrmt, & for the purpose of takg such proceedings the patentee shl permit his name to be used [upon being previously pperly indemnified against all costs, damages & expses in respect throf].

The same.
Another
form.

22. THE PATENTEE shl at all times durg the continue of this licence at his own costs & charges by all means in his power protect & defend the sd letters patent from all infringemts, [whether within or outside the limits afsd], by any pson or psons whomsr, & in default of his so doing, the rent & royalties hby reserved shl cease to be payable, but this licence shl nevertheless remain in full force, & in case of the sd rent & royalties so ceasg, such cessation shl be taken as a satisfon of the covt by the patentee for such protection as last afsd, or any liability of the patentee in respt throf.

Licensee
not to
dispute
validity
of patent.

23. THE LICENSEE shl not at any time or times hrafter dispute the validity of the sd letters patent.

Licensee
not to
assign or
grant sub-
licences.

24. THE LICENSEE shl not assn or transfer this licence or any pt throf to any pson or psons other than any future ptner or ptners in his firm or his succors in business or grt any sub-licence to any pson or psons whomsr [witht the consent in writg of the patentee].

Patentee
not to use
invention
or grant
other
licences.

25. THE PATENTEE shl not at any time durg the continue of this licence use or exercise the sd invention, or grt any licence to any other pson or psons whomsr to use or exercise the

(a) See *post*, p. 444, note (b).

same [or to use any machine or machines comprisg the same] [within the limits afsd] [witht the consent in writg of the licensee].

26. THIS LICENCE may be determined at any time after the first six calr months by the patentee or by the licensee, on givg to the other of them or leavg at his usual or last-known place of business or abode, three calr months' previous notice in writg of his intention so to do, & at the expiron of such notice this licence shl become void, but witht prejudice to the remedies of either party for the recovery of any moys then due to him hrunder.

Power to either party to determine licence on notice.

27. IF THE [RENT], royalties, or sums hby made payable, or any pt throf, shl at any time be in arrear or unpd for twenty-one days after the same shl have become due (whether legally demanded or not), or if the licensee shl become bkpt or enter into any arrangemt or composon with his credors, or shl make default in pformg or observg any of the covts, agrmts, or condons hrinbfe contd, & on his pt to be pformed or observed, then & in any such case the patentee may, by notice in writg given to the licensee, or left for him at his usual or last-known place of abode or business, revoke this licence, wch shl thrupon become void, but witht prejudice to any right of action or remedy of the patentee for the recovery of any moys then due to him hrunder, or in respt of any antecedent breach of any of the covts or agrmts of the licensee hrinbfe contd.

Power to determine licence on non-payment of royalties &c. (b).

28. IF THE LICENSEE shl not manufacture [& sell] at least —, accordg to the sd invention in any one yr commencg on the — day of —, the patentee may by notice in writg given to the licensee, or left for him at his usual or last-known place of abode or business, or, “by such notice as afsd,” determine this licence, wch shl thrupon become void, but witht prejudice, &c., *as in last form*, [or, “witht prejudice to any such rt of action or remedy of the patentee as afsd ”].

Power to determine licence if manufacture in sufficient (c).

29. IF THE licence hby grted or the benefit throf shl at any time durg the sd term become vested in more than one pson

Power to determine licence on

(b) As to the importance of this clause, see *Guyot v. Thomson*, [1894] 3 Ch. 388.

(c) As to the necessity for this, see *ante*, p. 429, note (d).

becoming
vested
in more
than one
person.

[other than persons trading & using the said licence together as co-partners] the patentee may, by notice in writing left at the place of business or the usual or last-known place of abode of any of such persons, revoke this licence, which shall thereupon become void, but without prejudice, &c., as in forms 27 or 28.

Provision
determin-
ing
licence on
death of
licensee.

30. IF THE licensee shall die during the continuance of this licence then this licence shall become void, but without prejudice, &c., as in forms 27 or 28.

Provi-
sion as
to fees,
where
paid by
licensee.

31. NOTHING herein contained shall render it incumbent on the patentee to pay the fees payable for keeping up the said letters patent, but in the event of the same becoming void by non-payment of such fees, this licence shall likewise become void, but without prejudice, &c., as in forms 27 or 28.

The same,
where
paid by
patentee
(a).

32. The patentee shall pay all fees & do all acts & things required by law for keeping up the said letters patent in the United Kingdom at least two calendar months before the expiration of the period prescribed by law, & shall make all payments & do all other acts & things which may be necessary for restoring the said letters patent if the same shall become void (b), & if the patentee shall neglect or refuse to pay the said fees or make the said payments or any of them & to produce the records thereof respectively to the licensee [assignee] or to do any of the said acts or things the licensee [assignee] may pay or do the same & may deduct any moneys expended by him under this provision from the said half-yearly payments.

Cove-
nants for
title in
licence
(c).

33. THE PATENTEE hereby covenants with the licensee that, notwithstanding anything by the patentee done, omitted, or knowingly suffered [the said letters patent are now valid & subsist, & that] the patentee now has power to grant a licence to use the said letters patent in manner aforesaid, & that the same shall be held, used & enjoyed by the licensee without any interruption or disturbance. AND THAT the patentee & every person claiming under or in trust for him will at all times at the cost of the licensee execute & do all such assurances & acts for confirming the licence hereby granted as by him may be reasonably required.

Cove-
nant for
validity
(c).

34. THE PATENTEE hereby covenants with the assignee that the said letters patent are valid & subsist.

(a) This is the usual arrangement where the licence or assignment is for a district.

(b) See Patents, &c., Act, 1907, s. 23, as amended by s. 20 of the Patents, &c., Act, 1919.

(c) As to implying covenants for title, see *ante*, p. 427, note (g) and p. 428.

35. THIS AGREEMENT [DEED] shl not be construed as a warranty by the patentee of the novelty or utility of the sd invention, or the validity of the sd letters patent. Clause excluding warranty.

36. THE PATENTEE shl not grt licences to any other pson or psons to use or exercise the sd invention upon terms more favourable or advantageous than those contained in this agreemt [deed] witht makg a correspondg alteron in the terms hrof. Licence to be granted on more favourable terms.

37. THE PATENTEE will not at any time durg the continuance of this licence seek leave to amend his specificon whether by way of disclaimer or orwise [or apply for any extension or renewal of the sd letters patent] witht the consent in writg of the licensee. Covenant by patentee not to apply for amendment (d).

38. IF ANY dispute or question shl arise betn the pties hto or their respective repves or assns with respt to their respective rights or liabilities or orwise under this agreemt [deed], the same shl be referred to the decision of two referees or their umpire psuant to the Arbitron Act, 1889. Arbitration clause.

39. IN THE constroon of this agreemt [deed] the expression "the patentee" shl, whenever the context so admits, be deemed to include the sd A., his exs, ads, & assns, & the expression "the assnee," or, "licensee," shl, whenever the context so admits, be deemed to include the sd B., his exs, & ads [& "assns," or, "permitted assns"]. Interpretation clause (e).

note (c). If there be any doubt as to the validity of the patent, the covenant that it is valid will, if so intended, be omitted, and form 35 substituted.

(d) See Patents, &c., Act, 1907, ss. 21, 22, 23, as amended respectively by s. 20 of the Act of 1919. Such application must be made by the "patentee," who, by the new s. 93 substituted by s. 19 of the Act of 1919, is "the person for the time being entered on the register as the grantee or proprietor of the patent;" so that in the case of an absolute assignment the provision will not be necessary.

(e) It is usually more convenient to place the interpretation clause at the beginning of the instrument; see Precedent I.

PRECEDENTS.

I.

ASSIGNMENT of LETTERS PATENT (f).

Parties. *PARTIES*, A., *patentee* (hrinar called the patentee, wch expression shl include his exs, ads, & assns, where the context so admits), 1; B., *assnee* (hrinar called the assnee, wch expres-
 Recitals. sion, &c., as above), 2; *Recite title to patent*, pp. 426 or 427, ff. 3 or 4; AND WHAS the patentee has agrd with the assnee for the sale to him of the sd letters patent & the exclusive & absolute benefit throf, for the sum of £—: NOW THIS
 Wit- DEED WITNESSETH, &c., *continue assmnt of patent*,
 nesseth. p. 428, f. 9.

AND IT IS HBY AGRD & DECLARED AS FOLLOWS:—

1. *Covenant by assignee to pay share of profits or royalties*, p. 428, f. 10 or p. 429, f. 11.
2. *Covenant by assignee to keep & furnish accounts*, p. 429, f. 12 or p. 430, f. 13.
3. *Covenant by assignee to avoid revocation or ordering of compulsory licence*, p. 430, f. 14.
4. *Covenant by patentee to give assistance*, p. 431, f. 19.
5. *Covenant by patentee to communicate improvements*, p. 431, f. 20.
6. *Covenant by patentee for validity*, p. 434, f. 34, or, *clause excludg warranty*, p. 435, f. 35.

IN WITNESS, &c.

(f) This should be registered under the Patents, &c., Act, 1907, s. 28, and the new s. 71 substituted by s. 16 of the Act of 1919. See also the Patents Rules, 1920, rr. 86 *et seq.* As to the registration of an informal document not under seal amounting to an equitable assignment, see *Re Casey*, [1892] 1 Ch. 104. Registration with notice of a prior equitable title gives no priority: *New Ixion Tyre, &c., Co. v. Spilsbury*, [1898] 2 Ch. 484.

As to the right of an assignee to an account of profits from a licensee, see *Bergmann v. Macmillan*, 17 Ch. D. 423. As to the liability of an assignee of the patent with notice of covenants with the original patentee contained in an intermediate assignment, see *Werdermann v. Soci t  G n rale d'Electricit *, 19 Ch. D. 246; *Dansk, &c. v. Snell*, [1908] 2 Ch. 127; *Barber v. Stickney*, [1918] 2 K. B. 356; [1919] 1 K. B. 121; and as to the liability of the assignee of a licence, see *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1901] 1 Ch. 196; [1902] 1 Ch. 146; *King v. David Allen & Sons, Billposting, Ltd.*, [1916] 2 A. C. 54.

II.

AGREEMENT *by a PATENTEE to ASSIGN his PATENT
RIGHTS in FOREIGN COUNTRIES (a).*

PARTIES, A., *inventor* (hrinar called the patentee, wch Parties.
expression shl include his exs, ads, & assns, where the context
so requires or admits), 1 ; B., *assnee* (hrinar called the assnee,
wch expression, &c., as above), 2 ; *Recite grant of letters patent*, Recitals.
pp. 426 or 427, ff. 3 or 4 ; AND WHAS it has been agrd betn the Agree-
ment.
parties hto that the assnee as the atty & in the name of the
patentee shl procure patents or other like privileges for using
the sd invention in the countries of — and —, or in such
of them or such parts throf resply as the assnee shl think fit,
& that the patentee shl assn the same when grted to the
assnee upon the terms & in the mner hrinar expressed. NOW
THIS DEED WITNESSETH that in psuance, &c., *conson*, Wit-
nesseth.
rect, [and in conson of the royalties & paymts hrinar reserved
& made payable] the patentee hby irrevocably appts the Power of
attorney.
assnee his atty in his name & on his behalf to apply for &
obtain patents or other like grts or instruments for vestg in
the patentee the sole & exclusive right & privilege of making,
using, exercising & vending the sd invention in the sd sevl
countries of — & — resply or any of them or any part
throf resply.

AND IT IS HBY AGRD & DECLARED AS FOLLOWS :—

1. IF & so soon as any such patents or other like grts or Patentee
instrumts as afsd shl have been grted or made to or in favour to assign
foreign
patents to
assignee.

(a) The rights of a patentee in one country as regards other countries
are (1) to apply for and obtain letters patent in them in the same manner
in which any communicatee or other importer of the invention might do
so, and (2) in countries to which the International Conventions of 1883
apply (Terrell, 5th ed., 500 ; Patents, &c., Act, 1907, s. 91, as slightly
amended by s. 20 of the Act of 1919), to obtain patents there, ante-dated to
the date of the existing patent, and in priority to other applications made
at any date after the grant of the existing patent.

The English Patent Office (and presumably the foreign Patent Offices
concerned) will not allow a patent granted in priority in this way to be in
the name of any person other than the foreign patentee : *Re Shallenberger*,
6 R. P. C., 550 ; since the intention is to protect the foreign patentee
himself, not his communicatees or assignees. If, therefore, it is desired to
confer on another person the benefit of the original patentee's priority,
the patent must, as provided for in this Precedent, first be obtained in
the original patentee's name, and afterwards assigned to the purchaser.

of the patentee in any of the sd countries or any pt throf resply the patentee shl forthwith at the cost of the assnee transfer such patents, grts or instruments & the full benefit throf unto the assnee or as he may direct, and shl execute & do every instrumt, act & thing wch may be neey or convenient for the ppose of vestg the same in the assnee.

Patentee
to furnish
specifica-
tion.

2. THE PATENTEE shl forthwith furnish to the assnee a true & correct copy of the specificon of the sd invention as filed & also shl forthwith enable the assnee to prepare a full & perfect description of the sd invention & the mode of workg the same so as to enable him to obtain good & valid patents, grts or instrumts for making, using, exercisg & vendg the sd invention & every pt throf in the sd several countries or any of them or any pt throf.

3. IF AT any time or times hrafter durg the term of any such patent, grt, or instrumt as afsd the patentee shl, &c., *continue covenant to communicate improvemts*, p. 431, f. 20, saying "such patents, grts, or instrumts as afsd."

[4. *Covenant to pay share of net profits*, p. 428, f. 10, or *covenant to pay royalties*, p. 429, f. 11, *mutatis mutandis*.]

[5. *Covenant to furnish accounts*, p. 429, f. 12 or p. 430, f. 13.]

Agree-
ment
to be
avoided
if assignee
fails to
obtain
patent.

6. THE ASSNEE will use his best endeavours to obtain such patents or other like grts or instrumts as afsd, & in the event of the failure of the assnee to obtain the same in any of the sd countries bfe the — day of — then & in every such case these psnts shl cease to have any effect as regards such country.

[7. THE ASSNEE will not do or omit any act or thing whereby any such patent, grt, or instrumt as afsd may become liable to revocon.]

8. NOTHING HRIN contd shl constitute a ptnp betn the sd parties (a).

IN WITNESS, &c.

(a) If the agreement constitutes in law a partnership (as to which see the P. Act, 1890, s. 2, and Vol. I., p. 28, note), a declaration that it shall not so operate is nugatory.

III.

AGREEMENT *for SALE of PATENT (b).*

AN AGRMT made the — day of — BETN A., of, &c. Parties.
(hrinar called the patentee), I, & B., carry on business as —
at, &c. (hrinar called the assnee), 2.

1. THE PATENTEE agrees to sell & the assnee agrees to pchase the patentee's patent for —, dated, &c., for the sum of £——
[& for the paymts hrinar mentd.] Agreement for sale.

[2. THE ASSNEE shl pay to the patentee durg the residue of the term of the sd patent the sum of £—— for every — of whatever size & description, manufactured accordg to the sd patent, wch shl be sold by the assnee.] Royalty.

[3. THE ACCTS betn the sd pties shl be settled half-yrly on the — day of —, & the — day of —.] Accounts.

4. THE ASSNEE havg pd to Mr. —, the patentee's solor, as stakeholder, the sum of £—— pt of the sd pchase-moy as a deposit (c) on the exon of this agrmt shl pay the residue of the sd pchase-moy to the patentee, or as he shl direct, on the — day of — next at the office of the patentee's solor at —, at wch time & place the pchase shl be completed. Completion.

[5. THE ASSNMT shl contain a covt by the assnee to avoid revocon of the sd letters patent or the granting of compulsory licences (d) under sections 24 & 27 of the Patents & Designs Act, 1907, as substituted by sections 2 & 1 respectively of the Patents & Designs Act, 1919, & to pay to the patentee as liquidated damages in the event of such revocon or the grt of any such compulsory licence, the sums of £ —— & £ —— resply. Assignment to contain covenant against revocation, &c.

6. THE ASSNMT shl also contain a covt by the patentee to communicate all improvemts in the sd invention to the assnee & to assist the assnee to procure letters patent for the same, wch shl be vested in the assnee upon the same terms as if such improvemts had formed pt of the original invention.

IN WITNESS, &c.

(b) This should be registered under the Patents, &c., Act, 1907, ss. 28, 71. See note (f), *ante*, p. 436. As to the stamp, see Stamp Act, 1891, s. 59, *ante*, p. 409, note (g).

(c) See Vol. I., p. 393, note (a).

(d) See *ante*, p. 430, note (a).

IV.

AGREEMENT for SALE of PATENT RIGHTS *where the*
 PATENT *has been applied for but NOT YET GRANTED* (e).

Parties. AN AGRMT made the — day of — BETN A., of, &c.
 (hrinar called the inventor), 1, & B., carryg on business as —,
 at, &c. (hrinar called the assnee), 2. *Recite applicon for patent,*
 p. 426, ff 1 or 2.

Agree-
 ment for
 sale. 1. THE INVENTOR agrees to sell & the assnee agrees to pchase
 all the rights of the inventor in the sd invention, & the benefit of
 the sd applicon & premes, & of any letters patent weh shl be
 grted in psuance throf, for the sum of £—— [& for the
 paymts hrinar mentd].

Royalty [2. THE ASSNEE shl pay to the inventor durg the term of
 such patent, &c., *continue as in Prec. III., clause 2.*]

[3. *Provision as to accounts, as in Prec. III., clause 3.*]

Agree-
 ment to
 obtain
 grant of
 patent. 4. THE INVENTOR will duly take all necy steps for obtaing
 the grt to himself of letters patent for the sd invention, & will assn
 the said patent when grtd to the assnee, & do all other acts &
 things necy for vestg the same in him.

5, 6. *Continue as in Prec. III., clauses 5, 6, saying “in-
 ventor,” instead of “patentee,” & “such patent” instead of
 “the sd patent.”*

IN WITNESS, &c.

V.

AGREEMENT for SALE of PATENT to a PROMOTER, *who is to*
form a COMPANY (a).

Parties. AN AGRMT made the — day of — BETN A., of, &c.
 (hrinar called the patentee), 1, & B., of, &c. (hrinar called the
 promoter), 2. *Recite title to patent, pp. 426 or 427, ff. 3*
or 4.

(e) This agreement need not and cannot be registered, it not being the
 practice at the Patent Office to register any document preceding the grant of
 the patent. As to the effect of an assignment of the provisional protection
 acquired by the application for a patent, see *Bowdens, &c., Ltd. v. Smith &*
Co., [1904] 2 Ch. 86, 122.

(a) See *ante*, p. 436, note (f).

NOW IT IS HBY AGRD AS FOLLOWS:—

1. THE PATENTEE agrees to sell & the promoter agrees to pchase the patentee's patent for —, dated, &c., for the sum of £—, of wch sum the promoter has pd to Mr. —, the patentee's solor, as stakeholder, the sum of £— as a deposit (b) on the exon of this agrmt.

Agree-
ment for
sale.

2. IF ON or bfe the date hrinar fixed for complon the promoter shl have assned his intt in the sd letters patent to a Co. incorporated under the Companies Acts, 1908 to 1917, for the ppose of pchasg & workg the sd invention havg a nominal capital of £— divided into — shares of £— each, [& havg a workg capital of £— at the least,] the promoter may procure the allotmt or transfer to the assnee in satisfon of a pt of the pchase-moy not exceeding £— of fully pd up shares in the sd Co wch for this ppose shl be valued at par.

Satisfac-
tion of
purchase-
money by
allotment
of shares
(c).

3. THE RESIDUE of the sd pchase-moy shl be pd or satisfied by the allotmt or transfer of fully pd up shares as afsd to the patentee or as he shl direct on the — day of — next at the office of the patentee's solor at —, at wch time & place the pchase shl be completed.

Comple-
tion.

4. *Covenant by patentee to communicate further improvemts to the Co., p. 431, f. 20.*

5. AT ANY time before the date fixed for completion the promoter may, by notice in writg given to the patentee or left for him at his usual or last known place of abode or business, determine this agrmt, & the patentee may at any time after the sd date fixed for completion, if the sd pchase-moy shl not have been pd or satisfied as afsd, in like mner determine this agrmt. Upon the determinon hrunder of this agrmt the patentee shl retain the sd sum of £—, *the deposit*, & neither party shl be liable to repay or make good to the other any expses or damages wch he shl have incurred or sustained.

Power
to de-
termine
agree-
ment.

IN WITNESS, &c.

(b) See Vol. I., p. 392, note (a).

(c) Cf. Palmer, 12th ed., pt. I., p. 144.

VI.

MORTGAGE of LETTERS PATENT (*d*). VARIATION where a SINKING FUND POLICY is INCLUDED in the SECURITY.

Parties. *PARTIES*, A., *mtgor* (hrinar called the patentee (*e*)), 1; B.,
 Recitals *mtgee* (hrinar called the *mtgee*), 2. *Recite grant of letters patent*,
 pp. 426 or 427, ff. 3 or 4; *agrmt for loan*, p. 10, f. 1. NOW THIS
 DEED made in psuance of the sd *agrmt* &, *conson & receipt*
 clause, p. 14, f. 1, WITNESSETH as follows :—

Wit-
 nesseth

1. COVNT FOR paymt of ppal & intt & intt after default, p. 15,
 f. 1, & p. 17, f. 2.

2. THE PATENTEE, as *benefi owner*, hby assns, &c., *continue*
assnmt of patent & habendum, p. 428, f. 9, subjt to the proviso
 for redmon hrinar contd.

3. THE PATENTEE as *benefi owner* hby assns unto the *mtgee*
 ALL THAT, *parcels for sinkg fund poly*, Vol. I., p. 490, f. 3, To
 HOLD unto the *mtgee* subjt to the proviso for redmon hrinar
 contd].

4. *Proviso for redmon*, p. 26, f. 2.

5. THE PATENTEE hby covts with the *mtgee*: AND IT IS
 HBY AGRD & DECLARED AS FOLLOWS :—

(i) *Provision for reduction of intt on punctual paymt*, p. 29,
 f. 1.

Cove-
 nant by
 patentee
 to pay
 fees, and
 for
 validity.

(ii) [That the sd letters patent are valid & subsistg &] that
 the patentee will durg the continuance of this secy pay all fees &
 do all acts & things required by law for keepg up the sd letters
 patent in the United Kingdom at least two calr months bfe the
 expiron of the period prescribed by law & will make all paymts
 & do all other acts & things wch may be necy for restorg the sd
 letters patent if the same shl become void (*f*), & will forth-
 with produce the rect for every such paymt to the *mtgee* or
 his assns. AND if the patentee shl neglect or refuse to pay
 the sd fees or any of them or to do any of the sd acts or
 things the *mtgee* may pay or do the same, & all moys, costs,

(*d*) To be registered under the Patents, &c., Act, 1907, ss. 28, 71. See
 note (*f*), *ante*, p. 436.

(*e*) In the mortgage forms to which reference is made, it will be
 necessary to substitute "patentee" for "borr."

(*f*) See the Patents, &c., Act, 1907, s. 20, as amended by s. 20 of the Act
 of 1919.

charges, & expses pd or incurred by the mtgee in respt of such paymts or acts or any of them shl be deemed to be pperly pd or incurred.

(iii) If the sd letters patent shl be infringed, the patentee shl forthwith (after notice of such infringemt) at his own cost, take all necy proceedings for effectually protectg & defendg the same, & in default of his so doing the mtgee may take such proceedings in the name & on behalf of the patentee, & all costs, charges, & expses pd or incurred by the mtgee in respt of such proceedings shl be deemed to be pperly pd or incurred.

Covenant to take proceedings against infringers (g).

(iv) If at any time or times hrafter durg the continuance of this secy the patentee shl invent, discover, or make, or acquire (whether by purchase or orwise) any improvmnt or improvements in the sd invention or in the mode of workg or using the same or wch may be applied to the sd manufacture, the same (if not already patented) shl forthwith be patented by the patentee, & whether patented or not shl be subjt to this secy & to the power of sale & other powers, trusts, & provons conferred by or incident to this deed in relation to the sd letters patent.

Further improvements to be added to security.

(v) *Covenant by patentee not to apply for amendmt*, p. 435, f. 37. saying "mtgee" for "licensee."

[(vi) *Covenant by patentee to keep up sinkg fund policy*, p. 40, f. 3.]

(vii) The patentee may (unless & until the power of sale applicable hto shl have become exercisable) use & exercise the sd invention, & from time to time grt licences for the use of the sd invention & letters patent for such term or terms of yrs, upon such condons & in such mner as he may think fit, but so that the patentee shl not be authorised to enter into any covts in the name of the mtgee or to subjt him to any psonal liability, & so that no exclusive licence shl be grted wtht the consent in writg of the mtgee, & so that on every such licence there be reserved the best rent or royalty that can conveniently be obtained wtht takg anything in the nature of a fine or premium, & so that there be contd in every such licence a power to the mtgee to revoke the sd licence in case of non-pformce of the

Power to patentee to use invention and grant licences until default.

(g) A mortgagor of a patent can sue an infringer without making the mortgagee a party: *Van Gelder, &c., Co. v. Sowerby, &c., Society*, 44 Ch. D. 374; but the mortgagee cannot sue, except, as provided above, as the attorney of the mortgagor.

condons thrin contd or non-paymt of the rents or royalties thby reserved, & so that the licensee or licensees do execute a counterpt or duplicate throf & do thereby covt for the due paymt of the rents or royalties thby reserved.

Power to
mort-
gagee
to grant
licences
after
default.

(viii) At any time or times after the power of sale applica-
able hto shl have bcome exercisable, the mtgee may grt
licences (whether exclusive or absolute or unrestricted or not)
for the use of the sd invention & letters patent for such term or
terms of yrs, upon such condons & in such mner as he may
think fit, & in conson of a sum or sums in gross, or any rents
or royalties or orwise.

(ix) *Events in wch power of sale shl become exercisable*, p. 58,
f. 7, *includg sub-clause (i.), & adding the followg sub-clause:—*

(b) If the patentee shl do or omit any act or thing whereby
the sd letters patent may become liable to revocon, or whereby
a compulsory licence might be ordered under sections 24 or 27
of the Patents & Designs Act, 1907, as substituted by sections 2
& 1 resply of the Patents & Designs Act, 1919 (a).

[(x) *Power to sell policy by way of surr*, p. 61, f. 12.]

(xi) *Charge of mtgee's expenses with intt*, p. 74, f. 11.

IN WITNESS, &c.

VII.

LICENCE to USE LETTERS PATENT, *with VARIATIONS for
an EXCLUSIVE or RESTRICTED LICENCE, and for the
LICENSEES being PARTNERS or a COMPANY (b).*

Parties.

PARTIES, A., *patentee* (hrinar called the patentee, wch
expression shl include his exs, ads & assns, where the context

(a) See *ante*, p. 430, note (a).

Effect of
licence.

(b) This should be registered under the Patents, &c., Act, 1907, ss. 28,
71; *New Ixion Tyre &c. Co. v. Spilsbury*, [1898] 2 Ch. 484. See note (f),
ante, p. 436. An exclusive licence does not amount to a grant of the patent,
and gives the licensee no right to sue in his own name for infringement,
except against persons having notice of the licence: *Heap v. Hartley*, 42
Ch. D. 461. The provision enabling the licensee to use the patentee's
name is of course of no avail against persons infringing under licence from
the patentee.

Stamp.

A licence by deed requires a 10s. stamp and an *ad valorem* stamp on the
consideration money, and on the minimum royalty prescribed.

so requires or admits), 1; B., [& C.,] or, "the — Co. Ltd" (hereinafter called the licensee[s]), which expression (c) shall include his exs, ads, & [permitted] assns [shall include the survivor of them, & the exs or ads of such survivor, their or his partners or partner for the time being & [permitted] assns] or, "shall include their [permitted] assns" where the context so requires or admits), 2. *Recite title to patent*, pp. 426 or 427, ff. 3 or 4; AND WHEREAS the patentee has agreed with the licensee[s] to grant to him [them] a licence to use & vend the said invention [to the extent & subject to the restrictions, covenants, & agreements, &] upon the terms hereinafter expressed & continued: NOW THIS DEED WITNESSETH, &c., *continue grant of licence*, pp. 427 or 428, ff. 7 or 8.

Recitals.

Agreement.

Witnesseth.

AND IT IS HEREBY AGREED & DECLARED AS FOLLOWS:—

1. *Covenant to pay moiety of net profits*, p. 428, f. 10, or *covenant to pay royalties*, p. 429, f. 11.

2. *Covenant to keep accounts*, p. 429, f. 12 or p. 430, f. 13.

3. *Covenant to affix labels*, pp. 430 or 431, ff. 15 or 16.

4. *Power to patentee to inspect factories*, p. 431, f. 17.

5. *Covenant (d) not to use invention except as licensed*, p. 431, f. 18.

6. *Patentee to give assistance*, p. 431, f. 19.

7. *Patentee to communicate further improvements*, p. 431, f. 20.

8. *Provision as to infringements (e)*, p. 432, ff. 21 or 22.

9. *Covenant not to dispute validity of patent*, p. 432, f. 23.

10. *Covenant not to assign or grant sub-licences*, p. 432, f. 24.

11. *Patentee not to use invention or grant other licences*, p. 432, f. 25, or, *No licence to be granted on more favourable terms*, p. 435, f. 36.

12. *Patentee not to apply for amendment*, p. 435, f. 37.

13. *Power to either party to determine on notice*, p. 433, f. 26.

14. *Power to determine licence on non-payment of royalties, &c.*, p. 433, f. 27.

(c) If the licence is not to be transmissible on the licensee's death, omit the words "exs, ads." If it is not to be assignable, omit "assns"; and if it is to be assignable only with the consent of the patentee, insert "permitted."

(d) This clause will be omitted in an exclusive licence.

(e) See *ante*, p. 444, note (b).

15. *Power (f) to determine licence if manufacture discontinued*, p. 433, f. 28.

16. *Power (g) to determine licence on becomg vested in more than one pson*, p. 433, f. 29.

17. *Proviso (h) determing licence on death of licensee*, p. 434, f. 30.

18. *Provision as to fees*, p. 434, ff. 31 or 32.

19. *Covenants for title*, p. 434, f. 33, or, *clause excludg, warranty of patent*, p. 435, f. 35.

20. *Arbitration clause*, p. 435, f. 38.

IN WITNESS, &c.

VIII.

LICENCE (*not exclusive*) by DEED POLL to USE a
PATENT in consideration of a SUM paid down. A
short form (a).

THIS DEED OF LICENCE made by me, A., *patentee*, of, &c., WITNESSETH that I do hby in conson of the sum of £—— now pd to me by B., of, &c. (the rect whrof I do hby acknowe), give liberty & licence to the sd B. to make, use, exercise, & vend the invention mentd or referred to in certn letters patent grted to me under the seal of the Patent Office bearg date the —— day of —— for the term of —— yrs from the date hrof, but not so as to warrant the origl validity of the sd letters patent. IN WITNESS, &c.

(f) This clause will be inserted if the licence is exclusive.

(g) This clause will be omitted if the licence is not transmissible, or is granted to two or more.

(h) This clause will be inserted only if the licence is not to be transmissible on the death of the licensee.

(a) This should be registered under the Patents, &c., Act, 1907, ss. 28 71; See note (f), *ante*, p. 436. As to the effect of a licence, see *ante*, p. 444, note (b).

IX.

ASSIGNMENT of LICENCE to use LETTERS PATENT (b).

PARTIES, A., licensee (hrinar called the licensee), 1; B., assnee (hrinar called the assnee), 2. WHAS by a deed of licence dated, &c., & made betn X., of the one pt, & the licensee, who with his exs, ads, & assns is thrinar called the licensee, of the other pt, the sd X. grted unto the licensee the sole, full, & exclusive licence to use & exercise an invention for improvemts in, &c., the letters patent for wch bear date, &c., durg the term of — yrs from the sd — day of — & to sell & dispose of all — manufactured accordg to the sd invention when & as the licensee shd think fit for his absolute use & benefit, subjt to the paymt of the royalties & to the pformce & observe of the covts by the licensee & condons thereby reserved & thrin contd, AND WHAS the licensee has agrd with the assnee to sell to him the sd licence for the sum of £—. NOW THIS DEED WITNESSETH that in psuance, &c., *conson & receipt*, the licensee, as **benefl owner**, hby assns unto the assnee, ALL THAT full & exclusive licence grted to the licensee by the sd indre of — To HOLD UNTO the assnee for all the residue now unexpired of the sd term of — yrs grted by the sd deed of licence subjt henceforth to the paymt of the royalties & the pformce & observe of the covts on the pt of the licensee & condons by & in the sd deed reserved & contd; *Covt by assnee to pay royalties & pform covts in licence, Vol. I., p. 520, mutatis mutandis.*

Parties.
Recitals.

Wit-
nesseth.

IN WITNESS, &c.

(b) This deed requires an *ad valorem* stamp on the purchase-money: Stamp. *Smelting Co. of Australia v. I. R. Commrs.*, [1897] 1 Q. B. 175; *Urban v. I. R. Commrs.*, 29 T. L. R. 476; *Velasquez v. I. R. Commrs.*, [1914] 3 K. B. 458, and must be registered under the Patents, &c., Act, 1907, ss. 28, 71. See note (b), *ante*, p. 444.

A licensee cannot, under a clause in his licence empowering him to transfer it to a company "formed to carry on his business," rid himself of liabilities by transferring to a company formed solely for the purpose of so ridding him: *Cummings v. Stewart*, [1911] 1 Ir. R. 236.

X.

Parties.

Recital of
title to
patent
and
agree-
ment.

AGREEMENT for WORKING a PATENT (c).

As to ex-
penses of
perfect-
ing and
patent-
ing.

AN AGRMT made, &c., BETN A., of &c., 1, & B., of, &c., 2:
Recital of applicon for patent, p. 426, ff. 1 or 2; AND WHAS the
 sd A. has expended the sum of £—— in takg such steps as
 afsd, & manufacturg specimens of articles formg the subjt of
 the sd invention, & orwise testg the same, & with a view to
 promote the success throf, & to obtain letters patent, he has
 requested the sd B. to enter into this agrmt: NOW IT IS
 HBY AGRD as follows:—

Inventor
to obtain
letters
patent
and vest
same in
parties as
tenants
in com-
mon.

1. THE SD B. shl expend under the direction of the sd A.
 a further sum of £—— in or towards testg & perfectg the sd
 invention, & obtaing letters patent for the same, includg the
 costs of & relatg to this agrmt, & each of the sd pties shl
 bear & pay one-half of any further expses in addon to the
 sd last-mentd sum of £—— wch may be incurred in testg &
 perfectg such invention, & obtaing the grt of or keepg up such
 letters patent, & assng the same as hrinar mentd. Provd that
 the sd B. shl not be under any obligon to advance a larger
 sum in the whole than £—— in respt of the expses hrinbfe
 mentd.

2. THE SD A. in conson of the paymts agrd to be made by
 the sd B. as afsd shl use his best endeavours to perfect the sd
 invention & to obtain the grt of the sd letters patent in his own
 name, & shl whenever required after the grtg of such letters
 patent assn the same togr with all benefits to be derived from
 the same or from the sd invention, & all improvemts hrafter
 to be made by the sd pties or either of them thrin or in the mode
 of makg the articles wch are the subjt throf, so that the same
 premes may be legally & beneficially vested in the sd pties hto

(c) This should be registered pursuant to the Patents, &c., Act, 1907,
 ss. 28, 71, as soon as the patent is completed. It is conceived that this
 agreement creates a partnership, see Vol. I., p. 28, note.

as tenants in common in the shares followg, namely, the sd A. — shares, & the sd B. — shares, & the sd pties hto shl (as well bfe as after the sd assnmt) be entitled to the same premes in the shares last afsd.

3. IF IT shl appear to the sd pties advisable to work the sd patent, each of them shl advance & contribute one moiety of all moys weh may be required for workg the same, & of all costs & expses of protectg & defendg the same from infringemt or orwise, but any expses of obtaing renewals or extensions of the sd letters patent, or obtaing letters patent for any such improvmnts as afsd shl be borne by the sd pties in the proportions in weh they are to be interested in the same as afsd.

Shares in which capital is to be advanced.

4. ALL ADVANCES & paymts made & to be made by the sd pties resply in respt of the sd invention & premes (includg the preliminary expses of obtaing the sd letters patent, & testg & perfectg the sd invention), shl be repaid to them with intt at £—— p.c. p.a. out of the proceeds to be derived from time to time from the sd invention & premes (includg the royalties & moys to be recd in respt of licences, or for the sale of the sd patent & premes), & the balance of such proceeds (after repaymt of the sd advances with intt & the expses of workg the sd patent & premes) shl durg the continue of this agrmt be divided betn the sd pties in the proportions in weh they are to be interested in the sd patent & premes as afsd.

Advances to be repaid and profits divided.

5. IF IT shl be determined not to work the sd invention & premes, or if the proceeds throf shl not suffice for the repaymt of the sd advances with intt as afsd, neither of the sd pties shl have any claim against the other of them in respt of such advances & intt: PROVD ALWAYS that if either party shl at any time make advances in excess of the proportion in weh he is bound to contribute towards the expses & paymts afsd, he shl be entitled to recover a moiety of such excess from the other of the sd pties with intt at the rate afsd, & such moiety & intt shl be a charge upon the share & intt of such other party in the sd patent & premes.

Provision in case of patent not being worked.

Attention
to busi-
ness.

6. THE SD A. shl give as much time & attention as may be neey for workg & developg the sd invention, & shl use his best endeavours to promote the success throf, but the sd B. shl not be bound to devote more time & attention thereto than he shl think fit.

Neither
party to
grant
licences,
or sell,
or incur
expenses
without
consent
of other.

7. DURG THE continue of this agrmt neither of the sd pties shl, witht the consent of the other of them, grt any licence for workg the sd patent & premes, or sell or dispose of his share or intt in the same, or make any paymt, or incur any expses, debts, or liabilities in respt of the premes, & if any paymt, debt, or liability shl be so made or incurred witht such consent, the same shl be deemed to be made or incurred on the separate & individual acct of the party makg or incurrg the same & shl be borne by him exclusively, & the other of the sd pties shl be indemnified by him in respt throf.

Accounts.

8. THE SD patent & premes shl be worked, & the business throf carried on in the name of the sd A. as patentee, & pper accts shl be kept by him of all paymts made & moys reeed & liabilities incurred in respt throf & of all other transactions relatg thereto, & all moys reeed in respt of the premes shl be pd into a bank to an acct to be kept in the joint names of the sd pties, & shl not be pd out except upon the joint cheque of both pties. The books of acct & other documts relatg to the sd patent & premes shl be kept in the custody of the sd A. at his office or such other place in London as he may think fit, but so that the sd B. may at any time have access to the same. The accts relatg to the sd patent & premes shl be made up & balanced half-yrly on the — day of — & — day of —, or oftener if the sd pties shl so agree.

Dura-
tion of
agree-
ment and
power to
deter-
mine.

9. THIS AGRMT shl remain in force until the expiron of the term of the sd letters patent, or of any renewal or extension throf, or any further letters patent to be obtained for any such improvemts as afsd, in case both the sd pties shl so long live, but subjt to the right of either party to determine the same at the expiron of the first seven yrs from the date hrof on givg three calr months previous notice in writg to the other of them, & in the event of this agrmt being determined by the death of either party or by such notice as afsd, the sd letters patent & any extension

or renewal throf & any such further letters patent as afsd & the royalties or other proceeds to be thenceforth derived from any licences grted previously to such determinon shl belong to the sd pties, or their respective exs, ads, or assns, in the shares afsd, but each of the sd pties, or his exs, ads, or assns, shl thenceforth be entitled to work & use the sd invention & premes, & to grt licences (not being exclusive licences) for workg & using the same witht being liable to acct to the other of such pties, his exs, ads, or assns, for the profits or royalties to be derived from the same.

10. IF AT any time bfe this agrmt shl have been determined in mner afsd either of the sd pties shl be of opinion that the same is not likely to prove remunerative & shl be desirous of abandong the same, but the other of the sd pties shl desire to work or continue the workg of the same, the sd first-mentd party may by notice in writg to the other party declare his intention of abandong the same, & this agrmt shl thrupon cease, & the party givg such notice shl not be under any further liability in respt of the expenses of workg the sd patent or orwise howsr in respt of the premes (except as hrinar mentd), & the sd patent & premes & the profits & proceeds (if any) throf shl thenceforth be the absolute & sole ppty of the party to whom such notice as afsd shl have been given, & such assnmts & acts as shl be necy for vestg the same in him shl be executed & done accordgly; **PROVD ALWAYS,** that if any proceeds shl at any time thrafter be derived from the sd patent & premes (whether by means of the workg throf or of licences or the sale throf) then the party givg such notice shl be entitled to be repaid out of such proceeds the amt of the advances or paymts weh shl have been made by him for any of the pposes afsd & weh shl not previously have been repaid, with intt at the rate afsd, rateably with the amt weh shl for the time being have been advanced or pd by the other party for such pposes & shl not have been repaid, with intt thron as afsd, but shl have no psonal claim against such other party in respt of such advances or paymts, except so far as such proceeds shl suffice for the repaymt throf as afsd. **PROVD** that if the moys advanced by either party previous to the sd notice shl exceed the proportion weh he shl have been bound to contribute as

Provision
where
one party
desires to
abandon.

afsd, one moiety of such excess shl in any event be repaid to him with intt by the other party.

Interpre-
tation.

11. THE MENTION in this agrmt of either of the sd pties hto by name, or orwise, shl be deemed to include his exs, ads, & assns, unless orwise inconsistent with the terms & provons hrof.

IN WITNESS, &c,

END OF PART I., VOL. II

